

BOMBAY HIGH COURT

Kumari Rukmani

Vs.

Appellate Authority

Spl. Civil Appln. No. 82 of 1966 with Spl. Civil Appln. No. 2066 of 1966

(Tarkunde and Deshpande, JJ.)

02.08.1968

JUDGMENT

Tarkunde, J.

1. These two petitions under Articles 226 and 227 of the Constitution seek to challenge the constitutional validity of Section 18(2)(b)(ii) of the Maharashtra Medical Practitioners' Act, 1961.
2. The petitioner in Special Civil Application No. 2066 of 1966 comes from Sind which now forms part of West Pakistan. He claims that his grand-father and his father were well known physicians practicing Ayurvedic and Unani Systems of Medicine. After the partition of the country, the family migrated to Harni camp at Baroda. The petitioner says that he started an independent dispensary at Baroda for practice in Unani and Ayurvedic Systems of Medicine and that he was practicing in Baroda from 1950 to 1954. In 1954 he shifted to Ulhasnagar near Bombay, where he has been practicing since then. After the passing of the Maharashtra Medical Practitioners' Act, 1961, he applied to the Board of Ayurvedic and Unani Systems of Medicine set up by the Act for inclusion of his name in the list maintained under Section 18 thereof. Section 18(2) (b)(ii) of the Act requires that the applicant should satisfy the Committee of the Board 'that on the 4th November 1951 he was regularly practicing any such system of medicine (i. e. any system other than the Homoeopathic or the Biochemic System of Medicine) in the Bombay area of the State'. In Section 3(6) of the Bombay General Clauses Act, the expression 'Bombay area of the State of Maharashtra' has been defined to mean 'the area of the State of Maharashtra excluding the Vidarbha region and the Hyderabad area of that State'. According to the petitioner, he was practicing on 4th November 1951 at Baroda, which was then included in the Bombay State but is not now a part of the State of Maharashtra. His application for having his name included in the list was rejected by the Committee of the Board on the ground that on 4th November 1951 he was not practicing any system of medicine in the Bombay area of the State. An appeal filed by the petitioner to the Appellate Authority under the Act was also rejected for

the same reason. The petitioner has approached this Court under Articles 226 and 227 of the Constitution for having these orders of the Committee and the Appellate Authority quashed and set aside.

3. The petitioner in Special Civil Application No. 82 of 1966 also comes from Sind which is now a part of West Pakistan. The petitioner says that her father was a medical graduate of the Bombay University, that he was practicing allopathic system of medicine in Sind, and that she (the petitioner) started helping him in practice from about 1937 when she was about 16 years of age. After the partition of the country, the family migrated to Akbar Camps at Thana in 1948. In October 1948 the petitioner's father was appointed a Medical Officer at Bhavnagar in Saurashtra and the petitioner also shifted there. The petitioner claimed that she had an independent practice in allopathic medicine at Bhavnagar from 1948 to 1958. In 1958 the petitioner shifted to Poona, where she started a maternity home which is still being run by her. On 12th August 1963 she applied to the Board of Ayurvedic and Unani Systems of Medicine to have her name included in the list maintained under Section 18 of the Maharashtra Medical Practitioners' Act, 1961. Her application was rejected by the Committee of the Board, and in appeal by the Appellate Authority, on the ground that on 4th November 1951 she was practicing, according to her case, at Bhavnagar which is not a part of the Bombay area of the State of Maharashtra. In her petition she prays that the said orders of the Committee and the Appellate Authority be quashed and set aside or, in the alternative, that Section 12(2)(b) of the Maharashtra Medical Practitioners' Act, 1961, be struck down as violative of the fundamental rights of the petitioner.

4. Before proceeding further it would be convenient to dispose of one submission made by Mr. Bhatia for the petitioner in Special Civil Application No. 2066 of 1966. As noticed above, this petitioner claims that from 1950 to 1954 he was practicing Ayurvedic and Unani Systems of Medicine at Baroda, which was then a part of the Bombay State, and thereafter at Ulhasnagar which was in the then Bombay State and is now in the Maharashtra State. Mr. Bhatia argued that since the petitioner was practicing at Baroda in the Bombay State on 4th November 1951, he should be held to have satisfied the provision of Section 18(2)(b)(ii) which requires that the applicant should have been regularly practicing on that day 'in the Bombay area of the State'. We do not find any substance in this argument. 'Bombay area of the State' in the above provision clearly means the Bombay area of the State of Maharashtra and that expression, according to Section 3(6) of the Bombay General Clauses Act, means 'the area of the State of Maharashtra excluding the Vidarbha region and the Hyderabad area of that State.' Since Baroda is not a part of the State of Maharashtra, it is not a part of the Bombay area of the State of Maharashtra.

5. Section 18(2) (b) (ii) of the Act has been attacked on behalf of the petitioners on the ground that it violates Article 14 of the Constitution. It will be noticed that at the time of their applications under Section 18 of the Act, both the petitioners claimed to have been regularly practicing in the Bombay area of the State of Maharashtra, one of them at Ulhasnagar and the other at Poona. Both claimed to have been practicing their respective systems of medicines from

before the 4th November 1951. The fact that they were practicing outside the Bombay area of the State on 4th November 1951 cannot, it is argued, provide any rational basis for denying to them the facility of enlistment which is available to those who were practicing on 4th November 1951 in the Bombay area of the State. It is urged that the basis of the classification of medical practitioners between those who were practicing in the Bombay area of the State on 4th November 1951 and those who were practicing outside that area on that day can have no rational nexus with the object of the Legislature in providing for the maintenance of a list under Section 18 of the Act.

6. In order to appreciate the object of the Legislature in providing for the maintenance of a list of medical practitioners. It is necessary to examine in some detail the history of the legislation and some of the provisions of the Maharashtra Medical Practitioners' Act, 1961. The history of the legislation is as follows :-

(a) In the Bombay Province the Bombay Medical Act, 1912 provided for the registration of allopathic medical practitioners. Only those who held any of the scheduled medical qualifications were entitled to have their names registered. Unregistered persons were debarred from holding certain appointments (Section 11). The Act, however, did not prohibit medical practice by unregistered person. The Act did not deal with persons practicing other than the allopathic system of medicine.

(b) The Bombay Medical Practitioners' Act, 1938, was passed with the dual object of (i) regulating the qualifications and providing for the registration of practitioners of Indian (Ayurvedic and Unani) Systems of Medicine and (ii) of preventing practice of any system of medicine by persons who were not registered under any of the Medical Acts. Section 16(1) of the Act provided that every person who passed a qualifying examination shall be entitled to have his name entered in the register of medical practitioners maintained under the Act. Qualifying examinations were examinations in Indian systems of medicine held by institutions which were to be approved by the Government on the recommendation of the Board of Indian Systems of Medicine set up by the Act. Section 16 also provided for the registration of some persons who had not passed a qualifying examination. It was laid down that those who had been in regular practice for a period of not less than ten years preceding the date on which they applied for registration were entitled to be registered. The last date for making such applications was 4th November 1941. It was further provided that every person who had not been in practice for period of ten years but had worked as an apprentice under a practitioner or had received training in an institution or had passed an examination should if such apprenticeship or training or examination was, in the opinion of the Board, sufficient to qualify him to practise as a practitioner, be entitled to have his name entered in the register. Thus, apart from this last category, registration was confined to those who passed a qualifying examination and those who had practised for more than ten years before 4th November 1941. Apart from the registration of medical practitioners, however, the Act provided by Section 18 for the

preparation and maintenance of 'a list of persons in practice on the 10th March 1938'. Every person who was not qualified for registration under this Act or under the Bombay Medical Act, 1912, but who was in regular practice of any system of medicine in the province on 10th March 1938 was entitled to have his name entered in the list, provided he applied for the inclusion of his name on or before 4th November 1941. Section 21 of the Act provided that after the expiry of two years from the date on which the Act came into force (i. e. after 4th November 1941), no person shall be entitled to have his name registered unless he has passed a qualifying examination. Section 32 prohibited medical practice by unregistered and unlisted persons. It laid down that no person other than a practitioner registered under this Act or a practitioner registered under the Bombay Medical Act, 1912 or a person whose name is entered in the list mentioned in Section 18 of the Act, shall practise medicine in any manner. Section 33 of the Act laid down that no person other than a practitioner registered under the Act or under the Bombay Medical Act, 1912 shall be entitled to sign or authenticate a birth or death certificate, or to sign or authenticate a medical or fitness certificate or be qualified to give evidence as an expert at any inquest or in any Court of Law. Section 37 made an exception in the case of a medical practitioner in any rural area who had commenced his practice prior to the date on which any practitioner registered either under the Bombay Medical Act of 1912 or of this Act had commenced his practice. Such medical practitioner could continue practice in the same rural area without registration or enlistment.

(c) The Bombay Medical Practitioners' Act, 1938, was amended by the Bombay Medical Practitioners' (Amendment) Act, 1949. The main purpose of the amendments was to regulate the practice of those practitioners of Indian systems of medicine who came to the Bombay Province either as refugees on the partition of the country or because of the inclusion in the Province of some areas of princely States. The amendments provided for registration or enlistment of (1) refugees (2) persons from princely States or areas included in the Province of Bombay, and (3) other persons whether residing in the Province or elsewhere who were in regular practice on 4th November 1941 but whose names could not be entered in the register or the list for sufficient and adequate reasons. Section 31B was added to the parent Act to provide for a fresh date before which applications for registration or enlistment of persons of the above categories could be entertained. Section 31C was added to lay down the qualifications for fresh registration or inclusion in the list. Section 31C provided that refugees and persons from princely States were entitled to registration if they had passed any of the examinations which were specified in a Schedule which was added to the parent Act by the Amending Act. In the case of refugees and persons from princely States who were not entitled to registration, it was provided that their names shall be entered in the list if they had been in regular practice for not less than five years before the date of their applications. It was further laid down that an applicant who had been in regular practice for a period of not less than two years may have his name provisionally entered in the list, but that the name shall be removed from list if he did not pass a qualifying examination within five years from the

date of his application. In the case of persons other than refugees and those coming from princely States, Section 31C laid down that where such persons were in regular practice on 4th November 1941 their names will be directed to be entered in the register or the list provided such persons proved that for sufficient and adequate reasons their names could not be entered in the register or the list.

(d) With effect from 1st November 1956 the Bombay State was re-organised with the addition of Vidarbha and Marathwada regions. In the Vidarbha area the Central Provinces and Berar Ayurvedic and Unani Practitioners' Act, 1947, was in force. The Act provided for the registration of Ayurvedic and Unani practitioners who had certain qualifications. The Act, however, did not contain any provision prohibiting medical practice by unregistered persons. In the Marathwada area the Medical Act of 1312 Fasli was in force. That Act provided for the registration of Ayurvedic, Unani and Homoeopathic practitioners. That Act also did not prohibit medical practice by unregistered persons. No list separate from the Register, as in the Bombay area, was maintained under the Acts in force in the Vidarbha and Marathwada areas.

7. It was on this background that Maharashtra Medical Practitioners' Act, 1961, was passed after the formation of the Maharashtra State. It appears that the main object of the Act was to unify the law relating to Ayurvedic and Unani practitioners in the different areas of the State of Maharashtra and to prohibit medical practice by those who were neither registered nor enlisted under this or any existing Act. The Bill which eventually resulted in the Act was published on 23rd November 1960. Some of the provisions of the Bill were materially altered by a Joint Committee of both Houses of the Maharashtra Legislature to which the Bill was referred. It is necessary to notice some of the alterations in order to understand the object of the provision impugned in these petitions. It was proposed in the Bill that registration of Ayurvedic and Unani practitioners in the State should be open to (1) all those who possessed the scheduled qualifications, (2) all those who were included in the existing registrations under the Acts prevailing in the Bombay, Vidarbha and Marathwada areas, and (3) all those who were practicing Ayurvedic or Unani Systems of Medicine for over ten years on 23rd November 1960, i. e. the date of the publication of the Bill. The list under the proposed Act was to consist of (1) all these whose names were included in the list kept under the Bombay Medical Practitioners' Act, 1938, and (2) all those who were regularly practicing on 23rd November 1960 (i.e. on the date of publication of the Bill) in any area of the State. These proposals contained in the Bill were modified by the Joint Committee. The following observations from the report of the Joint Committee explain the reason for the modifications with which we are concerned :

'As the practitioners in the Bombay area of the State already had chances to get registered or enlisted and practice without such registration or enlistment was ordinarily prohibited, it is considered undesirable to throw open the register and list again to all practitioners in that area, except that registration is kept open in these areas only to persons who were practicing on the 4th day of November 1941 (i. e. the date from which practice without

registration or enlistment was prohibited except in rural areas, or under other exceptions) and who for some reason or the other could not be registered. Enlistment is proposed to be allowed to persons who were practicing ten years thereafter, i. e. on the 4th November 1951.'

8. Section 17 of the Maharashtra Medical Practitioners' Act, 1961, deals with the practitioners' right of registration. Sub-section (3) of Section 17 provides that every person who possesses any of the qualifications specified in the Schedule to the Act shall be entitled to have his name entered in the register. Sub-section (4) lays down that the register will also include the names of all persons who were registered either under the Bombay Medical Practitioners' Act, 1938, or the Central Provinces and Berar Ayurvedic and Unani Practitioners' Act, 1947, or the Medical Act (Hyderabad Act I of 1312 Fasli) as in force in the Hyderabad area of the State. Sub-section (5) initially provided that registration shall also be open to two other categories (1) those who were regularly practicing the Ayurvedic or the Unani Systems of Medicine in the Vidarbha region or the Marathwada region for Unani Systems of Medicine in the Vidarbha region or the Marathwada region for a period of not less than ten years before 23rd November 1960 (the day on which the Bill was published), and (2) those who were on 4th November 1941 regularly practicing the Ayurvedic or the Unani Systems of Medicine in the Bombay area of the State but whose names were not entered in the register maintained under the Bombay Medical Practitioners Act, 1938. By subsequent amendment a third category was added to sub-section (5). It consisted of those practitioners from among refugees and inhabitants of princely States whose names were put in the list by virtue of Section 31C inserted in the Bombay Medical Practitioners' Act, 1938, by the amending Act of 1949. Persons qualified for registration under clause (6) of Section 17 had to apply for the purpose before 31st March 1965.

9. Preparation of a list of practitioners is provided by Section 18 of the Maharashtra Medical Practitioners Act, 1961. Sub-section (2) of Section 18 runs as follows:

'The list shall contain -

(a) the name of every person who on the day immediately preceding the appointed day, continued to be included in the list kept under Section 18 of the Bombay Medical Practitioners' Act, 1938, as in force in the Bombay area of the State and whose name is not entered in the register under sub-section (5) of Section 17:

(b) the name of every person whose case is not covered by clause (a) but who makes an application to the Registrar in the form prescribed by rules accompanied by a fee of ten rupees and such documents as may be prescribed by rules, on or before 31st March 1965 and who proves to the satisfaction of the Committee appointed under sub-section (6) of Section 17 -

(i) that on the 23rd day of November 1960 he was regularly practicing any system of medicine (other than the Homoeopathic or the Biochemic system of medicine) in the Vidarbha region or the Hyderabad area of the State; or

(ii) that on the 4th November 1951 he was regularly practicing any such system of medicine in the Bombay area of the State.'

10. Section 33 prohibits medical practice by any person whose name is not registered or listed under this Act or under other Acts dealing with Homoeopathic, Biochemic and Allopathic practice. Section 33A lays down that persons who are not practitioners registered under this Act or under the other Acts mentioned in Section 33 shall not be eligible to hold certain appointments. Section 34 provides that a birth or a death certificate or a fitness certificate shall not be valid unless it is signed or authenticated by a registered practitioner and that no unregistered practitioner shall be qualified to give expert evidence at any inquest or in any Court of Law.

11. By Section 40, the Bombay Medical Practitioners' Act, 1938, the Central Provinces and Berar Ayurvedic and Unani Practitioners Act, 1947, and the Hyderabad Act No. I of 1312 Fasli were repealed as from the "appointed day", which by definition was the date on which the whole Act except Chapter VI thereof came into force. The whole Act, except Chapter VI, was brought into force from 23rd October 1961. Chapter VI came into force on 1st November 1966. Section 33, which prohibits medical practice by unregistered and unlisted persons, falls in Chapter VI. It appears, therefore, that medical practice by unregistered and unlisted persons was not unlawful even in the Bombay area of the State between 23rd October 1961 and 1st November 1966.

12. The intention of the Legislature in dividing medical practitioners into two categories - those who were entitled to registration and those who were entitled to have their names entered in the list can be easily deduced from this legislative history. Registration is confined to those whom the Legislature regards as being qualified for medical practice. They are so qualified either because they have passed one of the qualifying examinations or because they had practised for a minimum number of years prior to 23rd November 1960, on which date the Bill was published. The list, on the other hand, is intended to comprise those practitioners who do not fully qualify for registration but whom the Legislature did not intend to be deprived of practice. In an affidavit in reply to one of these petitions filed by the Under Secretary to the Government of Maharashtra in the Urban Development, Public Health and Housing Department, it has been claimed that 'the intention behind preparing the said list was that these practitioners should not be deprived of the only means of their livelihood, because it was found that such practitioners were large in number and were too old to choose alternative means of livelihood.' It appears to us that that was clearly the intention of the Legislature in providing for a list under Section 16 of the Bombay Medical Practitioners' Act, 1938, and that the same intention animated the Legislature in providing for a list under Section 18 of the Maharashtra Medical Practitioners' Act, 1961.

13. On behalf of the State of Maharashtra Mr. G. N. Joshi argued that since the enlistment of medical practitioners under Section 18 of the Maharashtra Medical Practitioners' Act, 1961, was itself a concession based on humanitarian considerations, no objection under Article 14 of the

Constitution can be taken if the concession is granted to some persons and not to others. It appears to us that even in cases where the Legislature decides to make a concession on humanitarian grounds, the concession must be made impartially and without discrimination. A concession cannot be given to some persons and denied to others who are similarly situated.

14. Clause (b) of Section 18(2) of the Maharashtra Medical Practitioners' Act, 1961, differentiates between medical practitioners in the Vidarbha region and the Hyderabad area of the State on the one hand and medical practitioners in the Bombay area of the State on the other. In the Vidarbha region and the Hyderabad area medical practitioners are entitled to have their names included in the list if they were regularly practicing any system of medicine, other than the Homoeopathic or the Biochemic system, on 23rd November 1960. In the Bombay area of the State, however, medical practitioners are entitled to have their names included in the list only if they were regularly practicing on the 4th November 1951.' This means that medical practitioners in the Bombay area of the State have to be in practice for a much longer period for being entitled to have their names included in the list. We are of the view that this difference between the Vidarbha region and the Hyderabad area on the one hand and the Bombay area on the other is based on historical factors leading to a geographical classification and is free from the taint of discrimination.

15. Confining our attention, however, to medical practitioners practicing 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 practicing 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 practicing in the Bombay area of the State, only those would be entitled to have their names included in the list who were practicing 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 practicing regularly from 4th November 1951, but must have been practicing on that day 'in the Bombay area of the State'. The provision that medical practitioners must have been practicing 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.

16. In order to illustrate the discriminatory nature of the provision contained in Section 18(2)(ii), we shall take imaginary instances of five persons who were all practicing 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 practicing continuously in Bombay City from 1950 to 1963, when he applied under Section 18 of the Act. Since on 4th November 1951 he was practicing 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 practicing 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 practiced 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 included to enlistment, since Baroda is outside the State of Maharashtra. Similar would be the position of another person E who practiced in Bhopal from 1952 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.

17. We are accordingly of the view that the provision contained in Section 18 (2)(b)(ii) of the Act violates Article 14 of the Constitution. We would not have found fault with the provision if it had laid down that practitioners in the Bombay area of the State are entitled to have their names included in the list if they have been regularly practicing from before 4th November 1951 in any part of the country.

18. At one stage of his argument Mr. G. N. Joshi suggested that Section 18(2) (b)(ii), properly interpreted, covered only those practitioners who were regularly practicing in the Bombay area of the State on 4th November 1951 but not thereafter. Mr. Joshi urged that Section 18(2)(b)(ii) should not be held to cover persons practicing in the Bombay area after 4th November 1951, because such practice had been prohibited by Section 32 of the Bombay Medical Practitioners' Act, 1938. We are satisfied that this is not the correct interpretation of that provision. Section 18(2) must be read with Section 18 (1), and Section 18(1) provides that as soon as may be after the appointed day, the Registrar shall prepare and maintain in accordance with the provisions of the Act a list of persons who are not entitled to registration, but 'who have been practicing any system of medicine (other than the Homoeopathic or the Biochemic system of medicine)'. It is thus clear from Section 18 (1) that the list is confined to those persons who were practicing any system of medicine when the Act came into force (i. e. on 23rd October 1961). It follows that for being qualified for enlistment under Section 18(2)(b)(ii), a person must have been practicing medicine when the Act came into force and must also have been regularly practicing medicine in the Bombay area of the State on the 4th November 1951. The Legislature had obviously no reason to authorize the preparation and maintenance of a list of medical practitioners who had ceased to practice after 4th November 1951, i. e. for a period of nearly ten years before the Act was passed. We further find that it was not the intention of the Legislature to refuse the facility of

enlistment to those persons who had been practicing in the Bombay area of the State contrary to the provisions of Section 32 of the Bombay Medical Practitioners' Act, 1938. This follows from the fact that those unlisted and unregistered persons who were regularly practicing medicine on 4th November 1951 in the Bombay area of the State were doing so contrary to law. Mr. Joshi suggested that Section 18(2)(b)(ii) of the present Act was perhaps meant to authorize the enlistment of those practitioners who were permitted to practice in rural areas without registration or enlistment by Section 37 of the Bombay Medical Practitioners' Act, 1938. We are unable to accept this suggestion, because we find that the liberty which was given to the very limited class of unregistered and unlisted practitioners to practice in rural areas by Section 37 of the Bombay Medical Practitioners' Act, 1938, has been regranted by Section 37 of the Maharashtra Medical Practitioners' Act, 1961. Section 18(2)(b)(ii) of the present Act is by its terms not confined to persons practicing medicine in rural areas; it extends to all those who were regularly practicing medicine in the Bombay area of the State on 4th November 1951 and were in practice when the Act came into force.

19. We have held above that Section 18(2)(b)(ii) violates Article 14 of the Constitution. We have carefully considered whether it would be possible for us to strike down section 18(2)(b)(ii) of the Act without touching any of the other provision of the Act. The purpose of the list prepared under Section 18 is that persons whose names are included therein should be entitled to practise even though their names are not entered in the register maintained under this Act or in any of the registers specified in Section 33 of the Act. Section 33 prohibits medical practice by persons who are neither registered nor enlisted. If we strike down Section 18(2)(b)(ii) and retain Section 33 intact, the result will be that even those practitioners who were regularly practicing in the Bombay area of the State on 4th November 1951, and whose names may have been already included in the list, would be prohibited from practice by virtue of Section 33. It was clearly not the intention of the Legislature to prohibit the medical practice of these persons. Thus the deletion of the provision contained in Section 18(2) (b)(ii) would result in expanding the scope of the penal provision of Section 33 beyond what the Legislature intended. It follows that Section 18(2)(b)(ii) cannot be severed from Section 33. In

*Chamarbaugwalav. Union of India*¹, the Supreme Court formulated seven rules for determining the severability of legislative provisions. Out of these, rule 3 is in these terms:

'Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole.'

It appears to us that Section 18(2)(b)(ii) and Section 33 form a part of a single scheme and that the former provision cannot be severed from the latter.

20. Moreover, the grievance of the petitioners is that their names are not included in the list, although the names of similarly situated persons are so included, with the result that the

petitioners would now be deprived of their medical practice. We will not be granting any relief to them if we were merely to strike down Section 18(2)(b)(ii). The consequence of striking down Section 18(2)(b) (ii) and retaining Section 33 will be that persons who are similarly situated when compared to the petitioners, and who are at present entitled to practise, will also be deprived of their practice. Hence, having come to the conclusion that Section 18(2)(b)(ii) is violative of Article 14 of the Constitution, we have no alternative but to declare that that provision as well as Section 33 of the Act are ultra vires the Constitution.

21. In the result we declare that Section 18(2)(b)(ii) and Section 33 of the Maharashtra Medical Practitioners' Act, 1961, are ultra vires the Constitution. The result will be that Section 33 will not be enforced against the petitioners. In each petition, the costs of the petitioner will be paid by the third respondent the State of Maharashtra.

Order accordingly.

¹59 Bom LR 973