

A Knowledge based Homoeopath's Plea for Registration Dismissed

A knowledge base Homoeopathy Doctor N Sudhakaran, posing Societies Registration Act, Phd and Awards recipient application applied for Registration at Travancore Cochin council, W.P. WP(C).NO. 31720 OF 2013 had been dismissed by the Honourable High Court, Ernakulam, Kerala. The Honourable Mr.Justice P.R.Ramachandra Menon delivered the Judgment as follows

Rejection of the application preferred by the petitioner for registration by the 1st respondent as a Homoeopathic Medical Practitioner in the State Registry is under challenge in this writ petition.

2. The petitioner allegedly started practice as a 'Homoeopath' in the year 1964, though he did not have any formal qualification in this regard. It is stated that, by virtue of the credentials of the petitioner, he obtained a job in the ministerial cadre of the 'Bhabha Atomic Research Centre' as Personal Assistant to the Managing Director in the year 1967. On coming across the practice and knowledge in Homoeopathy, the petitioner was permitted by the employer to practise Homoeopathy, serving the employees of 'BARC', as certified by the employer vide Ext.P3 certificate dated 11.11.1998. The petitioner took voluntary retirement and

came out of the service in the year 1997 and is continuing the practice as above.

3. It is stated that, the exceptional skill of the petitioner in the field of Homoeopathy has been recognised from different corners, as borne by Exts.P5 to P18, including invitations to participate in various programmes, seminars, lectures conducted in different institutions in India and abroad. In respect of the career advancement of the petitioner, he wanted to have registration by the 1st respondent Council and accordingly, an application was submitted before the Council on 31.07.2009 (Ext.P21), which however had not been favourably considered.

4. The case of the petitioner is that, registration can be given under two different and independent channels; on the basis of qualification and also by virtue of experience. By virtue of the mandate under Rule 15(3)(c) of the Homoeopathy Central Council Act, 1973, if a person was having practice of not less than 'five' years, as on the date of commencement of the Act, he can be granted the registration as envisaged under Section 15(1) of the Homoeopathy Central Council Act, 1973. The Central Act came into force on 20.12.1973 and the factum of the petitioner's service

being rendered as a Homoeopathic Practitioner, while serving as an employee under the BARC, stands recognised by the employer himself vide Ext.P3. Such a course was permitted by virtue of the enabling provision under the relevant Service Rules, particularly Rule 15(c) of the Central Civil Services (Conduct Rules), 1964. Since the application preferred by the petitioner was not considered, he was constrained to approach this Court by filing WP(c) No.31665 of 2010, which was disposed of as per Ext.P18 judgment dated 02.01.2013, directing the 1st respondent to consider and pass appropriate orders after giving an opportunity of hearing, within the time as specified therein.

5. Pursuant to the direction given by this Court, the petitioner was heard and Ext.P24 order came to be passed on 07.06.2013, whereby the request made by the petitioner has been turned down and the application for giving registration has been dismissed. This in turn is under challenge in this writ petition.

6. Heard both the sides including the learned counsel for the petitioner as well as the learned Standing Counsel representing the 1st respondent.

7. The learned counsel for the

petitioner submits that, the petitioner is an exceptionally skilled/talented person, which factum is sought to be substantiated with reference to the various certificates produced and that the same were also enclosed as part of the application (produced as Ext.P19 in Ext.P18 writ proceedings). According to the petitioner, he has obtained M.D., D.Sc. and Ph.D., as awarded by an Open University in Sri Lanka, but it is fairly conceded that the said qualification is not included in the relevant Act, so as to have registration. However, by virtue of the practice, which was being done by the petitioner even prior to 'five' years from the date of commencement of the Central Act, he was entitled to have registration under Section 15(3)(c) of the Act, which forms the crux of the contentions raised by the petitioner. This vital aspect has been omitted to be considered while passing the impugned order, which hence is under challenge.

8. The learned Standing Counsel for the 1st respondent submits that, the idea and understanding of the petitioner as to the provision sought to be relied on for obtaining registration is quite wrong and misconceived. There is no case for the petitioner that, he has filed any application under the 'Central Act' before the 3rd respondent (under Section 23). On the other hand, Ext.P21 application preferred by the petitioner is before the 1st respondent, who is the statutory authority

under the 'State Act' and the said application can only be under Section 23 of the said Act. The learned Standing Counsel further points out that, the State Act (Travancore Cochin Medical Practitioners' Act) virtually deals with three systems of medicines, (i) Modern Medicine, (ii) Ayurveda (indigenous including Unani) and (iii) Homoeopathy. There are three different councils; commonly known as Travancore Cochin Medical Council and each of them deals with the separate system. By virtue of the mandate under Section 20 of the State Act, separate registers have to be maintained by the concerned Council. Part 'A' of the register consists of registration given to persons, who are having the recognised qualifications and Part 'B' deals with others, who are to be registered without the qualification, ie. by virtue of the experience in terms of Section 23(1)(ii) of the Act. The term 'recognised qualification' defined under Section 23(1)(ii) of the Act, refers to the qualification scheduled and the term 'Schedule' is defined under Section 2(p), ie. the Schedule under the State Act. Admittedly, the petitioner does not have any qualification prescribed under the Schedule to the State Act. As such, the petitioner is not entitled to have registration as a qualified Medical Practitioner in terms of Section 23(1)(i).

9. Coming to the scope of registration under Section 23(1)

(ii), the provision reads as follows:-

"(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 practise as a practitioner for a period of not less than five years preceding the first day of April, 1953."

Since the State Act came into force with effect from 09.10.1953, the operative period of 'five' years immediately preceding the first day of April, 1953, will commence from 01.04.1948. The petitioner admittedly was not practising as a Homoeopathic practitioner during the said period, he having started the alleged practice only in the year 1964. Hence the petitioner does not come within the purview of Section 23(1)(ii) as well, so as to have registration under the State Act. It was in the said circumstances, that the claim of the petitioner to have registration was considered and rejected as per Ext.P24 order dated 07.06.2013. The petitioner has not chosen to challenge Ext.P24 order and this being the position, no interference is warranted in this writ petition.

10. With regard to the declaration sought for, this Court finds it fit and proper to consider whether the petitioner is entitled to have registration under Section 23 of the 'Central Act', if he intends to make an application before the

competent authority in this regard. Here, the relevant provision, which is sought to be pressed into service by the petitioner (at the time of raising the claim to have registration under the State Register by the 1st respondent) is Section 15(3)(c), which reads as follows:-

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

It is brought to the notice of this Court by the learned counsel appearing for the 1st respondent that, the said provision will be attracted to the persons, who belong to the State, where a State Register was not maintained at the relevant time. Even according to the petitioner, as borne by the documents produced, particularly Ext.P1 reply/information gathered by the petitioner under the provisions of the Right to Information Act, it is revealed that, the last registration given by the 1st respondent on the basis of experience, ie. under Section 23(1)(ii) of the State enactment was on '01.04.1969'. Though the provisions says that, such registration could have been granted within a period of 'one' year from the date of commencement of the Act, the provision also enables the Government to have the same extended to an appropriate extent and presumably, it was accordingly that such registration was granted to the

person concerned on 01.04.1969, more so in view of Section 38 of the State Act. In any view of the matter, this only goes to show that, registration was being given by the 1st respondent to persons having experience alone ie. to persons without qualification under the 'State Act', by maintaining such Register at least as on 01.04.1969. As it stands

so, at the time of commencement of the Central Act on 20.12.1973, Kerala was a State, where proper register was being maintained under the State Act. This being the position, it cannot be successfully contended by the petitioner that, he is a person, who belongs to a State, where no State Register was being maintained at the relevant time so as to have the benefit of Section 15(3)(c) of the Central Act, to have had the registration. Therefore, even if the petitioner makes an application before the 3rd respondent, to have registration in terms of Section 23 of the Central Act, with reference to Section 15(3)(c), it cannot be of any use/help to grant registration under the 'Central Act' as well, as he stands outside the purview of the scheme of the statute.

11. At this stage, the learned counsel for the petitioner points out that, by virtue of Section 14 of the Central Act, it is open for the Central Government to have negotiations with the authorities in the countries outside, to grant equivalency of the qualification like the one as possessed by the petitioner, to be treated as a

'recognised qualification' as in the schedule and to have registration accordingly.

12. The learned Standing Counsel appearing for the 1st respondent submits that, this may not come to the rescue of the petitioner, for the fact that, the petitioner does not have any qualification at all in 'Homoeopathy' to consider the question of equivalency and that the certificates produced along with Ext.P21 application are in some other field. The learned counsel further points out that, Ext.P2 certificate issued by the Indian Board of Alternative Medicines is not a valid document to prove the credentials of the petitioner with regard to the qualification, as it has been issued by a Society registered under the Societies Registration Act. The version of the 1st respondent is sought to be rebutted by the learned counsel for the petitioner pointing out that, Homoeopathy is an alternative system of medicine and as such, it is for the Central Government to have the matter considered in terms of Section 14 of the Central Act. This Court does not intend to express anything in this regard, as it is for the petitioner to take up this aspect if he is aggrieved, before the appropriate authority and it is for the competent authority to have it considered in accordance with law.

With the above observation, interference is declined and the writ petition is dismissed as devoid of any merit.