

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20683 of 2019

Rakesh Kumar Singh S/o Krishna Kumar Singh Resident of Village- Berua,
P.S.- Saraiya, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. Union of India through Secretary, Ministry of Ayush, Ayush Bhawan, B Block, GPO Complex, New Delhi.
2. Secretary, Ministry of Ayush, Ayush Bhawan, B Block, GPO Complex, New Delhi.
3. Under Secretary, Ministry of Ayush, Ayush Bhawan, B Block, GPO Complex, New Delhi.
4. The State of Bihar through Principal Secretary, Department of Health and Family Welfare, Bihar, Patna.
5. Principal Secretary, Department of Health and Family Welfare, Bihar, Patna.
6. The Bihar State Council of Ayurvedic and Unani Medicine, K-52, Hanuman Nagar, P.O.- Lohiya Nagar, Patna- 20 through its Registrar.
7. The Registrar, The Bihar State Council of Ayurvedic and Unani Medicine, K-52, Hanuman Nagar, P.O.- Lohiya Nagar, Patna- 20.
8. The Central Council of Indian Medicine, 61-65 Institutional Area, Janakpuri, New Delhi through its Registrar,

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Lalan Kumar, Advocate Mr. Vivek Amritesh, Advocate
For C.C.M.	:	Mr. Janardan Prasad Singh, Sr, Advocate Mr. Deepak Kumar, Advocate
For U.O.I.	:	Mrs. Punam Kumari Singh, CGC
For the Respondent/s 6 &7	:	Mr. Vishwaroop Jha, Advocate Mr. Manoj Kumar Jha, Advocate



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 05-12-2023

The petitioner is said to have qualified the Graduate of Ayurvedic Medicine and Surgery (for brevity “G.A.M.S.”) Course conducted in the Shrihari Shakuntalayam Ayurvedic Medical College and Hospital, Muzaffarpur, Bihar which had a permanent recognition and affiliation with effect from the academic year 1992 in terms of Sections 13, 14 and 15 of the Bihar Development of Ayurvedic and Unani System of Medicine Act, 1951.

2. The petitioner took admission to the G.A.M.S. course in the academic year 1996, of the five-year course (1996-2001 batch) while the 1st, 2nd and 4th year examinations are conducted by the college, the 3rd and 5th year examination is taken by the State Faculty of Ayurvedic and Unani Medicines under the Bihar State Ayurvedic and Unani Medicines Council, Patna (for brevity “ Medicines Council”); which examination of the 3rd and 5th year were known as preliminary and final examinations respectively.

3. The petitioner appeared in all the four years examinations but before he could participate in the 5th year



examination, a writ petition was filed challenging the validity of the course conducted by the institutes under the aegis of the State Medicines Council. The matter went up to the Hon'ble Supreme Court decided in *Bihar State Council of Ayurvedic and Unani Medicine v. State of Bihar* reported in (2007) 12 SCC 728.

4. Later to the decision, Ministry of Health and Family Welfare, Government of India issued notification dated 25.06.2010 under Section 14 (2) of the Indian Medicine Central Council Act, 1970 (48 of 1970) (for brevity "Act of 1970") along with other amendments, amending *inter alia* Item No. 6 of Column 4 of Schedule II applicable to the State of Bihar. The validity of the Graduate in Ayurvedic Medicine and Surgery Course conducted under the aegis of the State Faculty of Ayurvedic and Unani Medicines, Patna, Bihar was restricted to the period between 1953 to 2003.

5. According to the petitioner, after the said notification, the State Faculty conducted an examination in the month of April, 2012 in which the petitioner participated and qualified. The petitioner also is said to have been subjected to an internship and a completion certificate was issued as on 15.01.2013. The State Faculty granted provisional certificate to



the petitioner which was followed with a registration with the Bihar State Council of Ayurvedic and Unani Medicines.

6. Later on the basis of a complaint, the Council constituted a committee to inquire into the matter which found that the Institute from which the petitioner is alleged to have qualified is a fraudulent one. The committee accordingly submitted its report on 09.03.2016, based on which the registration of the petitioner stood cancelled. The same is under challenge in the writ petition.

7. Shri Rajendra Narayan, learned Senior Advocate appearing for the petitioner submitted that once registered he started practicing medicine and thus the cancellation was made arbitrarily. It is argued that the amendment to the Act of 1970 was brought in the year 2010, thus recognizing the G.A.M.S. Course which is carried out till 2003. It is based on this amendment in the year 2010 that the 5th year examination was conducted by the State Faculty, which conferred the degree on the petitioner, enabling his practice in medicine. It is argued that the decision of the Hon'ble Supreme Court squarely permits the continuance of practice of the petitioner and also similarly situated persons.

8. Shri Janardan Prasad Singh, learned Senior



Advocate appearing for the National Commission for Indian System of Medicine, which has superseded the Central Council of Indian Medicine (the 8th respondent) points out that the decision of the Hon'ble Supreme Court is against the petitioner. The petitioner is not a person who qualified prior to 2003 and hence, if at all the subsequent qualification is to be recognized and registration granted, the Institute from which he studied should have a recognition from the erstwhile Central Council of Indian Medicine within three years from the year 2003.

9. Learned Senior Counsel also placed before us the judgment of another Division Bench of this Court in CWJC No. 20544 of 2019, which is said to regulate the issue as of now. Ms. Punam Kumari Singh, Central Government Counsel appeared for the Union of India, while Shri Vishwaroop Jha, appeared for Respondent Nos. 6 and 7. The Government Advocate represented the Respondent Nos. 4 and 5.

10. We do not think that the decision of another Division Bench in CWJC No. 20544 of 2019 regulates the matter, especially since it was a Public Interest Litigation filed against the admissions continued in the G.A.M.S. course in the two respondent colleges impleaded therein. The Division Bench noticed the judgment of the Hon'ble Supreme Court and



observed that any Institute could carry on the course, if the Institution seeks and obtain permission from the Central Government for the medical qualification issued by it and that it does not invalidate the qualifications already conferred by the previously established medical colleges.

11. We have looked at the decision of the Hon'ble Supreme Court in *Bihar State Council of Ayurvedic and Unani Medicine (supra)*. Therein, the question raised was the eligibility of six writ petitioners who had obtained a G.A.M.S degree from the State Faculty of Ayurvedic and Unani Medicines established under Section 17 of the State Act of 1951, to appear in the examination for admission in post graduate courses in Ayurveda, leading to award of degree of Doctor of Medicine in Ayurveda.

12. The question arose also in the teeth of the amendment brought about in the Act of 1970, in the year 2003 by introduction of Sections 13-A, 13-B and 13-C for the purpose of continuance of the Institutions which had not obtained prior permission of the Central Government. A time limit of three years had been provided under Section 13-C to regularize the institution's affairs as required under the Act, for obtaining permission of the Central Government. Section 13-A,



by its insertion regulated the opening of the indigenous medical colleges, which by virtue of the *non obstante* clause interdicts establishment of a medical institution without the prior permission of the Central Government. Under Section 13-B, the medical qualification granted by a college established without such prior permission would not be a recognised medical qualification. Section 13-C (1) puts the existing colleges at par with the new colleges as both of them were required to seek permission within three years from the commencement of the amending act.

13. The Hon'ble Supreme Court in *Bihar State Council of Ayurvedic and Unani Medicine (supra)* categorically found that the phrase employed in the provision 'on or before' clarified unequivocally that the existing colleges are also required to seek permission and there is no question of an exemption. We extract hereunder Paragraph 58, 59 and 60 of the aforesaid decision:-

58. Section 13-C(2) further provides that the medical qualification granted by existing colleges whose establishment has not been recognised by the Central Government, the medical qualification would not be a recognised qualification. Similar requirement is to be fulfilled by the new medical colleges opened i.e. to seek permission of the Central Government for the medical qualification to be recognised qualification. Thus, new colleges or existing colleges cannot any



more grant a recognised qualification without the sanction of the Central Government. Section 13-C(2) does not say that the effect of non-permission by the Central Government to the existing colleges after the amending Act came into force would render the medical qualifications already granted by the existing colleges before the insertion of Sections 13-A, 13-B and 13-C in 2003, unrecognised.

59. *The whole spectrum of the amendment brought about by introducing Sections 13-A, 13-B and 13-C indicates that it has an application from the date they have been introduced by an amendment in the 1970 Central Act. The effect of the amendment brought about is clear to us that all the medical colleges which are in existence or the medical colleges which have to be established should compulsorily seek permission of the Central Government within the period provided and on failure to get the permission of the Central Government the medical qualification granted to any student of such medical college shall not be a recognised medical qualification for the purposes of the 1970 Act. The established colleges are also required to seek permission of the Central Government for the medical qualification to be recognised medical qualification but it would not mean that the already conferred medical qualification of the students studied in such previously established medical colleges would not be a recognised medical qualification under the 1970 Act.*

60. *On a reasonable construction of these sections, we hold that the provisions of Section 13-B whereby the qualification granted to any student of a medical college would not be deemed to be a recognised medical qualification would not apply. When a degree has been legally conferred on the students prior to the commencement of the amending Act of 2003, it shall be treated as a recognised degree although the medical college has not sought permission of the Central Government*



within a period of three years from the commencement of the amending Act of 2003.

14. The above extracted operative portion of the judgment clearly indicates that even colleges established prior to 2003 will have to get a recognition/permission from the Central Government which alone would entail those obtaining medical qualifications, subsequent to 2003, after the said amendments came into force, to validly practice medicine.

15. However, while holding that along with the newly proposed colleges, the existing colleges would also be required to seek permission of the Central Government, it was all the same held that it would not mean that the degrees conferred already would be rendered invalid. Hence, when a degree is conferred prior to the commencement of the Amending Act of 2003, it would be treated as a recognised degree, even if the medical college had not sought for and obtained permission of the Central Government, before that or within a period of three years from the commencement of the Amending Act of 2003.

16. The petitioner does not have the case that he was conferred with a degree prior to 2003. Insofar as the conferment of the degree claimed by the petitioner in the year 2012 is



concerned, going by the binding declaration of the Hon'ble Supreme Court, it can be recognised as a valid qualification enabling practice in medicine, only if the Institute which carried on the course and conferred the degree was one recognised within three years from the date of commencement of the Amending Act of 2003, even if the Institute, as is in the present case, was one established prior to the Amending Act. There is no such contention raised in the writ petition. The writ petitioner, hence is not entitled to the reliefs prayed for.

17. We cannot, but notice that the amendments brought to the Act of 1970 was only to make it in consonance with the decision of the Hon'ble Supreme Court. The G.A.M.S. degree granted by the State Faculty of Ayurvedic and Unani Medicines, within the State of Bihar would be recognised only if the grant of degree is between 1953 to 2003. This does not in any manner help the petitioner nor can the examination conducted in 2012 be said to be one carried out pursuant to the notification of 2010.

18. We find absolutely no reason to interfere with the amendments made to the Act of 1970 nor do we find a reason to accept the contentions of the petitioner against the cancellation of his registration.



19. We dismiss the writ petition, leaving the parties
to suffer their respective costs.

(K. Vinod Chandran, CJ)

Rajiv Roy, J

I agree

(Rajiv Roy, J)

Anushka/-

AFR/NAFR	NAFR
CAV DATE	30.11.2023
Uploading Date	05.12.2023
Transmission Date	

