**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 5324 OF 2007**

**Rajasthan Pradesh V.S. Sardarshahar & Anr. …. Appellants**

**Versus**

**Union of India & Ors. …. Respondents**

**WITH**

**CIVIL APPEAL NO. 5325 OF 2007**

**Ayurveda Vikas Chikitasak Sangh, Jodhpur**
**Thr. its Secretary Abdul Vaheed …. Appellant**

**Versus**

**Union of India & Ors. ….Respondents**

**WITH**

**CIVIL APPEAL NO. 4758/2010**
**(Arising out of SLP(C) No.21043/2008)**

**Central Council of Indian Medicine ….Appellant**

**Versus**

**Ved Prakash Tyagi & Ors. ….Respondents**

**WITH**

**CIVIL APPEAL NO. 4757/2010**
**(Arising out of SLP(C) No. 20912/2009)**

**Delhi Pradesh Registered Medical Practitioners Association, Delhi ….Appellant**

**Versus**

**Union of India and Ors. ….Respondents**

**WITH**

**CIVIL APPEAL NO. 4759/2010**
**(Arising out of SLP(C) No.3986/2010)**

**Haryana vaidaya Samiti, Haryana a registered body, thr. Its President ….Appellant**

**Versus**

**State of Haryana & Ors. ….Respondents**

**J U D G M E N T**

**Dr. B.S. CHAUHAN, J.**

1. Leave granted in SLP (C) Nos. 21043/2008, 20912/2009 and 3986/2010.

In all the aforesaid Civil Appeals, common questions of law are involved and, therefore, they are heard together. Questions involved in all these cases are as under:

(i) As to whether persons who hold either the degree or diploma of "Vaidya Visharad" or "Ayurved Ratna" from Hindi Sahitya Sammelan Prayag/Allahabad which are not included as recognized qualification in Schedule II of the Indian Medicine Central Council Act, 1970 (hereinafter called as the 'Act 1970') have a right to practice in medical sciences.

(ii) As to whether cut off date i.e. 1967 as per Entry No.105 in the Second Schedule of the Act,1970 is arbitrary and thus, liable to be quashed.

(iii) As to whether restriction imposed under the Central Act from practicing, unless names appear in the Central Register, is violative of Article 14 of the Constitution of India with reference to the State Act.

2. Facts and circumstances giving rise to Civil Appeal Nos.5324-5325 of 2007 and appeal arising out of SLP(C) No.21043/2008 are that Section 32 of the Rajasthan Indian Medicine Act, 1953 (hereinafter referred to as 'Act 1953') provided that persons who had

obtained degree of "Vaidya Visharad" or "Ayurved Ratna" from Hindi Sahitya Sammelan Prayag were recognized as having sufficient qualification for practicing as Vaidyas in Rajasthan and they were permitted to get themselves registered as Vaidyas in the register maintained under the said Act 1953. Section 17(2) of the Act 1970 provided that persons who possessed the qualifications as laid down in Second, Third and Fourth Schedule of the Act 1970 would be permitted to practice. Section 17(3) however, carved out an exception for those Vaidyas who had been practicing prior to the commencement of the Act 1970. Different provisions of the Act 1970 were enforced throughout the country but on different dates. In Rajasthan, Section 17 came to be enforced w.e.f. 1.10.1976. One Ved Prakash Tyagi filed Writ Petition No.733 of 2000 before the High Court of Rajasthan for seeking large number of reliefs including the restrain order to those who obtained the degree/certificate of "Vaidya Visharad" or "Ayurved Ratna" from Hindi Sahitya Sammelan Prayag after 1967 to practice as Vaidyas and further to delete their names from the register so maintained under the Act 1953. The High Court considered the matter elaborately and came to the following conclusions:

(1) Persons who did not possess requisite qualification prescribed under Schedule II, III and IV of the Act 1970 were not eligible to contest the elections notwithstanding they were enrolled in the State Register and were covered by the exception clause under Section 17(3)(b) and were permitted to practice medicines;

(2) Qualification prescribed under the Act 1953 to the extent it was repugnant to the Act 1970, would not confer any person a right to practice or seeking enrolment in the State Register;

(3) Section 17 of the Act 1970 came into force in Rajasthan w.e.f. 1.10.1976. Thus, a person who has acquired the diploma/certificate from Hindi Sahitya Sammelan Prayag, subsequent thereto would not be eligible to be enrolled in State Register; and

(4) Any person who acquired such certificate/diploma after 1.10.1976 would not have any right to practice or participate in election.

3. Hence, Civil Appeal Nos. 5324-25 of 2007 have been filed by Vaidya's Samiti and Chikitasak Sangh being aggrieved by the judgment and order of the High Court that persons who acquired qualification from Hindi Sahitya Sammelan after 1.10.1976 were not eligible and entitled to practice. Appeal arising out of SLP (C) No.21043 of 2008 has been filed by the Central Council of Indian Medicine (hereinafter referred to as 'CCIM') challenging the order of the High Court to the extent that persons who acquired certificates between 1967 and 1.10.1976 have also been permitted to practice.

4. Appeal arising out of SLP(C) No. 3986 of 2010 has been filed by the Haryana Vaidya Samiti against the judgment and order dated 13.10.2009 passed by the Punjab and Haryana High Court in C.W.P. No. 14392 of 2009 holding that persons who acquired certificates/diplomas from Hindi Sahitya Sammelan Prayag after 1967 are not entitled to practice and it had upheld the validity of Entry No.105 in the 4th Column regarding the expression "upto 1967" in the Second Schedule of the Act, 1970.

5. Appeal arising out of SLP(C) No. 20912 of 2009 has been preferred by Delhi Pradesh Registered Medical Practitioners Association being aggrieved by the judgment and order of Delhi High

Court dated 19.11.2009 passed in C.W.P. No. 1999 of 1998 wherein it has been held that unless a person possessed qualification as required in Schedule II, III and IV to the Act 1970, he is not entitled to practice.

6. In all these cases, learned counsel appearing for the appellants namely, Shri S.K.Dholakia, Sr. Advocate and Shri B.D. Sharma have submitted that such a restriction imposed on appellants infringes their right to practice under Article 19(1)(g) of the Constitution of India, 1950. More so, once their names stood enrolled in the State Register, they were entitled to practice. More so, they are entitled to continue to practice, as an exception has been carved out under Section 17(3) of the Act, 1970. Restriction imposed under the Act 1970 from practicing unless the names appear in the Central Register is violative of Art.14 of the Constitution with reference to the statutory provisions of the Act 1953. There is no rational for fixing the cut- off date as 1967 in Entry No.105 of the Second Schedule to the Act, 1970 and thus liable to be quashed. Hence, the appeals deserve to be allowed.

7. Per contra, Shri R.U. Upadhyay, learned counsel appearing for CCIM submitted that a person who does not possess the qualifications as mentioned in Schedule II, III and IV of the Act, 1970

is not eligible and entitled to indulge in any kind of medical practice. The Legislature has power to put reasonable restrictions on the right to practice under Article 19(1)(g) of the Constitution by virtue of Clause (6) of the said provision. Provisions contained in the Act 1953, being repugnant to the statutory provisions of Act 1970, will not apply by virtue of Art.254 of the Constitution. Cut-off date i.e. 1967 appearing in Entry No.105 of the Second Schedule to the Constitution shows that certificates issued by the said Society were not recognized after 1967. More so, Article 21 which deals with the life and liberty of persons has also to be kept in mind and the poor people of this country who cannot afford to avail the facilities of qualified doctors have to be protected from quacks. Hindi Sahitya Sammelan Prayag had not been recognised for imparting medical education after 1967. Hindi Sahitya Sammelan is not a medical institution or university or a board. It is merely a society registered under the Registration of Societies Act. It does not have any affiliated colleges. Therefore, such persons cannot be permitted to indulge in medical practice. Rajasthan High Court erred observing that persons, who possessed the qualifications from Hindi Sahitya Sammelan Prayag upto 1.10.1976 i.e. the date of enforcement of Section 17 of

the Act 1970 in Rajasthan, be allowed to practice.

8. We have considered the rival submissions made by learned counsel for the parties and perused the record.

9. Admittedly, in none of these cases, the Hindi Sahitya Sammelan Prayag/Allahabad has been impleaded as party. There is nothing on record to show that the persons who have acquired such certificates from the said societies possess any other academic qualification i.e. as to whether they have passed matriculation or intermediate or they possess any other qualification to make them eligible to apply for such certificate.

10. There is no document on record disclosing as what was the institution/school where such persons had got admission, imparted education, attended the classes and practicals in laboratories and what was its duration. A bald statement in all these cases that persons possess certificates from Hindi Sahitya Sammelan has been made. Study of medical sciences require attendance in the classes and a proper technical training under competent faculty as they play an important role in maintaining the public health. None of the learned counsel appearing for the appellants is able to point out as to which University/Board, the educational institution where they were

imparted medical education had been affiliated and as to whether such schools had ever been accorded recognition by the competent Statutory Authorities.

11. It is settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. In **Bharat Singh & Ors**. Vs. **State of Haryana & Ors**., AIR 1988 SC 2181, this Court has observed as under:-

> "In our opinion, when a point, which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the Court will not entertain the point. There is a distinction between a hearing under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, i.e. a plaint or written statement, the facts and not the evidence are required to be pleaded. In a writ petition or in the counter affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

12. Similar view has been reiterated in **M/s. Larsen & Toubro**

**Ltd. & Ors. Vs. State of Gujarat & Ors.**, AIR 1998 SC 1608; **National Building Construction Corporation Vs. S. Raghunathan & Ors.**, AIR 1998 SC 2779; **Ram Narain Arora Vs. Asha Rani & Ors.,** (1999) 1 SCC 141; **Smt Chitra Kumari etc. Vs. Union of India & Ors.,** AIR 2001 SC 1237; and **State of U.P. & Ors. Vs. Chandra Prakash Pandey & Ors. ,** AIR 2001 SC 1298.

13. In **M/s. Atul Castings Ltd. Vs. Bawa Gurvachan Singh**, AIR 2001 SC 1684, this Court observed as under:-

> "The findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law."

14. Similar view has been reiterated in **Vithal N. Shetti & Anr. Vs. Prakash N. Rudrakar & Ors.**, (2003) 1 SCC 18; **Devasahayam (Dead) by L.Rs. Vs. P. Savithramma & Ors.,** (2005) 7 SCC 653; and **Sait Nagjee Purushottam & Co. Ltd. Vs. Vimalabai Prabhulal & Ors.**, (2005) 8 SCC 252.

15. In absence of any pleadings made by the appellants, it is difficult to say that any of such persons possessed any qualification making them eligible even to apply for such certificates from Hindi Sahitya Sammelan Prayag.

16. In **The Principal & Ors. Vs. The Presiding Officer & Ors.** AIR 1978 SC 344, this Court held that 'recognition' means that the school has been recognized or acknowledged by the appropriate authority under the Statute and 'affiliation' means that the students of that school are eligible to appear in the examination. Therefore, purpose of affiliation is only to prepare and present the students for public examination, recognition of a private school is for the other purposes mentioned under the Statute and unless the school is recognized by the appropriate authority, the school cannot be amenable to any other provision of the Statute applicable in this regard.

17. In **Re : The Kerala Education Bill, 1957** AIR 1958 SC 956; and **T.M.A Pai Foundation & Ors.** Vs. **State of Karnataka & Ors.** (2002) 8 SCC 481, this Court held that it is always open to the State or the Statutory Authority to lay down conditions for recognition of an educational institution namely, that the institution must have particular amount of funds or properties or number of students or standard of education and so on and so forth and it is also permissible for the Legislature to make a law prescribing conditions for such recognition, however, such a law should be constitutional and should not infringe

any Fundamental Right of the minorities etc. Recognition is a Governmental function.

18. This Court has persistently deprecated the practice of an educational institution admitting the students and to allow them to appear in the examinations without having requisite recognition and affiliation. This kind of infraction of law has been treated as of very high magnitude and of serious nature. Students of a un-recognised institution cannot legally be entitled to appear in any examination conducted by any government, university or board. (Vide **Minor Sunil Oraon Thr. Guardian & Ors. Vs. C.B.S.E. & Ors.** AIR 2007 SC 458).

19. Similarly, recognition must be there with the school to make it subject to the provisions of the Act. Recognition signifies an admission or an acknowledgement of something existing before. To recognize is to take cognizance of a fact. It implies an overt act on the part of the person taking such cognizance. (Vide **T.V.V. Narasimham & Ors. Vs. State of Orissa,** AIR 1963 SC 1227).

20. In **State of Tamil Nadu & Ors. Vs. St. Joseph Teachers Training Institute & Anr.** (1991) 3 SCC 87, this Court held that

students of un-recognised institutions are not entitled to appear in any public examination held by the Government and it is not permissible for the Court to grant relief on humanitarian grounds contrary to law to the person who claim to have passed any examination from such institutions.

In view of the above, it is evident that any institution which is not recognised cannot impart an education and students thereof cannot appear in the examination held by the government, university or Board.

21. As per Entry 66 of List I to the 7th Schedule of the Constitution, the Parliament is competent to make laws for determining standards of institution for higher education or research and scientific and technical institutions. Such powers are also available with the Parliament in view of Entries 25 and 26 of List III as it includes the medical education. However, in view of Entry 6 of List II, the State Legislature is competent to make laws pertaining to public health and sanitation, i.e. hospitals and dispensaries. Section 2(1)(h) of the Act 1970 provides “recognised medical qualification” as any of the medical qualifications included in the II, III or IV Schedule to that Act. Section 14 of the Act 1970 provides a procedure for recognition of

medical qualifications provided in medical institutions in India and Section 17 provides for entitlement/eligibility of persons possessing qualifications included in II, III and IV Schedule to the Act to be enrolled for practice. So far as the II Schedule to the Act 1970 is concerned, the relevant entries read as under:-

| | | | | |
|---|---|---|---|---|
| 105 | Hindi Sahitya Sammelan, Prayag | Vaidya Visharad<br><br>Ayurved-Ratana | …….<br><br>…….. | From 1931 to 1967<br>From 1931 to 1967 |

22. Section 14(2) of the Act 1970 provides that any University or Board/Medical Institution if wants to impart medical education and has not been included in the Second Schedule, may apply to the Central Government for recognition of its medical qualification and to include in Second Schedule. If such an application is made, the Central Government is empowered to make necessary amendment as and when required in the Second Schedule, after considering the application.

23. In **UmaKant Tiwari & Ors**. Vs. **State of U.P. & Ors**. (2003) 4 AWC 3016, a Division Bench of the Allahabad High Court has considered the issue at length and came to the conclusion that the

Hindi Sahitya Sammelan Allahabad/Prayag were only registered societies and not educational institutions. The said societies had no business to impart education in medical sciences. Hindi Sahitya Sammelan, Allahabad was a fake institution whereas Hindi Sahitya Sammelan, Prayag was recognised only from 1931 to 1967.

24. In **Dr. Vijay Kumar Gupta & Ors.** Vs. **State of U.P. & Ors.** (1999) AWC 1783, a Division Bench of the Allahabad High Court has held that a degree/certificate/diploma from Hindi Sahitya Sammelan, Prayag acquired after 1967 was not recognised and those who obtained the same subsequent to 1967 were not entitled to practice medicines.

25. In **Dr. Vijay Kumar Gupta & Ors.** Vs. **State of U.P. & Ors.** (1999) 2 UPLBEC 1063, a Division Bench of the Allahabad High Court considered the matter at length alongwith statutory provisions of the Act, 1970 and came to the conclusion that Hindi Sahitya Sammelan, Allahabad had never been empowered to issue such certificates/degrees. However, certificates issued by the Hindi Sahitya Sammelan, Prayag were recognised during the period of 1931 to 1967. Thus, any such certificate subsequent thereto could not entitle a person to practice medicine.

26. In **Virender Lal Vaishya** Vs. **Union of India & Ors. 2003** (2) Mah.LJ 64, a Division Bench of the Bombay High Court held that Hindi Sahitya Sammelan, Prayag was not a recognised university/Board and thus could not award degree, diploma or certificate.

27. In **Charan Singh & Ors**. Vs. **State of U.P. & Ors**. AIR 2004 All. 373, the Allahabad High Court considered the issue of validity of certificates issued by Hindi Sahitya Sammelan, Prayag and came to the conclusion that the said institution had absolutely no authority to confer any degree or diploma of "Vaidya Visharad" and "Ayurved-Ratna" after 1967 and any person who has acquired such certificate after 1967 was not entitled to practice at all.

28. The judgment of the Allahabad High Court in **Umakant Tiwari** (supra) was set aside by this Court and the matter was remanded to the High Court to decide afresh in Civil Appeal No.1453/2004 vide judgment and order dated 25th May, 2007, for the reason that matter had initially been decided by the High Court in 2003 without giving opportunity of hearing to Hindi Sahitya Sammelan Allahabad/Prayag.

29. After remand, Hindi Sahitya Sammelan Allahabad/Prayag were given notices and were directed to file the counter affidavits. The Court, after hearing all the parties concerned, including Hindi Sahitya Sammelan Prayag, vide judgment and order dated 23.10.2009, dismissed the writ petition.

30. So far as the question of validity of the cut-off date "1967 in Entry No.105" to Schedule II is concerned, the High Court observed as under:

> "From a bare reading of the aforesaid provisions of Act, 1970, it will be seen that only degrees/certificates granted by the Hindi Sahitya Sammelan, Prayag between 1931 to 1967 alone have been held to be recognised medical qualification for the purposes of Section 14 conferring a right to practice upon the holder of the degree under Act, 1970.
>
> With regard to challenge to the words "upto 1967", the only ground raised for contending that the cut off date is arbitrary and violative of Article 14 of the Constitution of India, is that no reasons have been disclosed. In support thereof, it is stated that the course/curriculum which was there prior to 1967 continues even thereafter for the purposes of examinations held by the Hindi Sahitya Sammelan and, no change has been introduced in the course after 1967.
>
> From the counter affidavit filed on behalf of Central Council of Indian Medicine, it is apparently clear that the words "upto 1967" have been provided in the Second Schedule of Act, 1970 with reference to the information

supplied by the State Government. Such prescription of 1967 in these circumstances, cannot be termed to be arbitrary, more so when in the facts of the case a power was conferred upon the institution, namely, Hindi Sahitya Sammelan, Prayag to make an application under Section 14(2) of Act, 1970 for amendment in the Schedule and for the degrees granted subsequent to 1967 also being included therein. The Hindi Sahitya Sammelan has deliberately avoided to make such an application. Because of such inaction, it has further avoided the directions referable to Sections 18 to 22 of Act, 1970 which would have been otherwise become applicable. This Court may record that it does not lie in the mouth of Hindi Sahitya Sammelan to challenge the cut off date mentioned in the Schedule as arbitrary, inasmuch as the said provisions itself provided an opportunity to get the Schedule amended by inclusion the degrees/certificates offered by the institution, i.e. Hindi Sahitya Sammelan, Prayag subsequent to 1967.

The reasons disclosed by the State-respondent for fixation of year 1967 as the cut off year, for recognising the degrees, i.e. **supply of information by the State Government has also not been disputed by Hindi Sahitya Sammelan nor any facts for questioning the aforesaid disclosure made by the State Government has been brought on record** of the present writ petition." (Emphasis added)

31. A Division Bench of the Bombay High Court while considering the writ Petition No. 7648 of 2000 (**Ayurvedic Enlisted Doctor's Association, Bombay Vs. The State of Maharashtra & Anr.**) on the

cut-off date, i.e. upto 1967 vide judgment and order dated 22.12.2006, recorded the following finding:

> "It is pointed out on behalf of the State that under the prevailing relevant rules upto 1967, the degrees of Vaidya Visharad and Ayurved Ratna were recognised by Uttar Pradesh Government and its Council. After that it **lost the recognition**. Therefore, these degrees conferred by Hindi Sahitya Sammelan, Prayag till 1967 only were recognised as medical qualifications under the Central Act but after that the recognition to these degrees was refused." (Emphasis added)

32. Thus, from the above, it is evident that under the then prevailing rules, certificates issued by the Hindi Sahitya Sammelan Prayag remained recognised only upto 1967. The Authorities under the Statute, on the report submitted by the State of U.P. had taken a decision not to recognise the said courses any further. The Society for the reasons best known to it never made an attempt to get recognition after fulfilling the legal requirements and getting the Entry No.105 in Second Schedule of the Act, 1970, modified.

33. In such a fact-situation, even by stretch of imagination, the said cut-off date cannot be termed as arbitrary. In fact it is not the cut-off date fixed by the Statutory Authorities, rather it indicates that such "courses" or certificates had not been recognised after 1967.

34. After remand, in **Umakant Tiwari** (supra) the Allahabad High Court has recorded the following findings of fact:-

> "Shri Jeevan Prakash Sharma, learned counsel for Hindi Sahitya Sammelan has fairly stated that Hindi Sahitya Sammelan does not grant affiliation to any institution for imparting education in medical courses. Hindi Sahitya Sammelan in fact only conducts written examination for the purposes of awarding the said degrees. Any person, who is successful in the written examination so held by the Hindi Sahitya Sammelan is awarded the degree, irrespective of the fact as to whether he was enrolled as a regular student in any institution or not.
>
> No application was ever made by the Hindi Sahitya Sammelan, Allahabad/Prayag to get its medical qualifications i.e. Vaidya Visharad and Ayurved Ratna recognized and included in the Second Schedule. They have not represented in exercise of powers under Section 14(2) of Act, 1970 before the Central Government for inclusion of the said qualifications in the Second Schedule at any point of time in respect of degrees/certificates granted subsequent to 1967. This has led a very peculiar situation. By not getting their medical qualifications approved/recognised under Second Schedule of Act, 1970, the Hindi Sahitya Sammelan has successfully evaded any inspection/any direction of the Central Council of India qua medical qualification granted by it for years together and therefore on one hand not only it did not represent the Government for inclusion of medical qualification even after publication of schedule as early as in the year 1971 till date i.e. nearly 38 years, it has also successfully evaded inspection by the Government/Central Council, for issuance of directions for maintenance of standard of education, curriculum etc. At the same time it alleges that its qualification be treated to be valid by the Central Council of Indian Medicine for the purpose of permitting practice of medicine. Despite being aware of the total prohibition qua grant of medical

qualification as per the Act of Parliament namely, Act No.48 of 1970 and despite there being a provision to get its medical qualifications recognized and included in the Second Schedule, no effort has been made by the Hindi Sahitya Sammelan for the purpose….

Hindi Sahitya Sammelan has fairly stated that it does not affiliate or recognise any institution and it exercises absolutely no control on the teaching in the subject of medicine qua degrees of Vaidya Visharad and Ayurved Ratana, nor it is necessary for a candidate to appear in the examination conducted by the Hindi Sahitya Sammelan to have been admitted as a regular student in any institution imparting education in the field of medicine. The Hindi Sahitya Sammelan holds written examination only for awarding the degree. In the opinion of the Court such grant of degree without any practical teaching, cannot be approved of and it is for this reason that the Central Government has come out with Central Act laying down the norms in detail for education being imparted in the field of medicine."

35. In **Pramod Kumar Vs. U.P. Secondary Education Services Commission & Ors.** (2008) 7 SCC 153, this Court held that recognised degree can only be awarded by University constituted/established under the provisions of University Grants Commission Act or Rule or any State Act or Parliament Act. No University can be established by a private management without any statutory backing. Similar reasons apply to Hindi Sahitya Sammelan also, as it is only a society duly registered under the Societies

Registration Act. The competence to grant medical degree under any provisions of law is therefore, wanting.

36. In **Delhi Pradesh Registered Medical Practitioners Vs. Delhi Admn. Director of Health Services & Ors**., AIR 1998 SC 67, this Court held that unless a person possess the qualifications prescribed in Schedule II, III and IV of the Act, 1970, does not have a right to practice and the Central Legislation will proceed over State Act if there is any repugnancy between the two.

37. In **Dr. Mukhtiar Chand & Ors. Vs. State of Punjab & Ors**. AIR 1999 SC 468, this Court examined the issue of delegation of power dealing with the provisions of the Drugs and Cosmetics Act, 1940 wherein various observations have been made regarding registered medical practitioners and certain rules therein had been declared ultra vires by the High Court. However, the issue involved herein had not been raised in that case, though an observation has been made that persons enrolled on the State register under accepted law who enjoyed the privileges including the privilege to practice in any system of medicine may under certain circumstances also practice other system of medicine. In the said case, the issue was confined to the rights of those persons who were otherwise entitled to prescribe all

medicines under the Drugs and Cosmetics Act, 1940 and the issue involved herein i.e. as to whether a person having no qualification as prescribed under the provisions of Act 1970 can be held to be qualified and entitled to practice Indian medicines, was not involved in **Dr. Mukhtiar Chand (supra)**.

38. This Court in SLP (C) No. 22124 of 2002, **Vaid Brij Bhushan Sharma Vs. Board of Ayur & Unani Systems, Med. & Anr**. decided on 2.12.2002 also re-iterated the view that issue involved in **Dr. Mukhtiar Chand** (supra) was quite different and persons possessing such certificates were not entitled to practice. The Court held as under:-

> "We are of the considered view that the judgment of the three Judge Bench reported in Dr. Mukhtiar Chand and Others case (supra) is totally different on principles as also the basis of claim therein, from the one relevant and necessary so far as the case on hand is concerned. The right of the petitioner therein to continue to practice as registered medical practitioner was not claimed on the basis of a degree of Vaid Visharad and Ayurved Rattan awarded by Hindi Sahitya Sammelan, Prayag as in this case, before us. The efficacy of this very degree to entitle the holders thereof to continue to practice as medical practitioner by virtue of the saving clause and protection under Section 17(3) of the Indian Medicine Central Council Act, 1970, had come up for decision in the earlier case and with particular reference to the provisions of Section 14 of the Indian Medical Central Council Act, 1970, read with the provisions contained in the schedule thereto it has been held that only such of those degrees

issued between 1931 and 1967 were alone recognized for the purposes and not the one obtained by the petitioner in the year 1974, long after the coming into force of Section 14 on 15.8.1971 in the whole of the country. In the light of the above principles which directly applied to the case of the petitioner we find no merit in this petition and the same is dismissed."

39. In **Udai Singh Dagar & Ors**. Vs. **Union of India & Ors**. (2007) 10 SCC 306 while dealing with a similar issue, this Court has held as under:-

"We, therefore, are of the opinion that even in the matter of laying down of qualification by a statute, the restriction imposed as envisaged under second part of Clause (6) of Article 19 of the Constitution of India must be construed being in consonance with the interest of the general public. The tests laid down, in our opinion, stand satisfied. We may, however, notice that Clause (6) of Article 19 of the Constitution of India stands on a higher footing vis-à-vis Clause (5) thereof. (vide State of Madras v. V.G. Row AIR 1952 SC 196)."

40. In Civil Appeal No. 1337 of 2007, **Ayurvedic Enlisted Doctor's Assn. Mumbai Vs. State of Maharashtra & Anr.** decided on 27.2.2009, this Court considered the issue involved herein at length and came to the conclusion as under:-

"So far as the claim that once the name is included in the register of a particular State is a right to practice in any part of the country is not tenable on the face of Section 29 of the Central Act. The right to practice is restricted in the sense that

only if the name finds place in the Central Register then the question of practicing in any part of the country arises. The conditions under Section 23 of the Central Act are cumulative. Since the appellants undisputedly do not possess recognized medical qualifications as defined in Section 2(1)(h) their names cannot be included in the Central Register. As a consequence, they cannot practice in any part of India in terms of Section 29 because of non-inclusion of their names in the Central Register. Section 17(3A) of the Maharashtra Act refers to Section 23 of the Central Act relating to Central Register. Section 17(1) relates to the register for the State. In any event, it is for the State to see that there is need for having qualification in terms of Second and fourth Schedule. The claim of the appellants is that they have a right to practice in any part of the country. In terms of Article 19(6) of the Constitution, reasonable restriction can always be put on the exercise of right under Article 19(g)."

41. This Court further came to the conclusion that unless the person possesses the qualification as prescribed in Schedule II , III and IV of the Act, 1970, he cannot claim any right to practice in medical science and mere registration in any State register is of no consequence.

42. In view of the above, it is evident that right to practice under Article 19(1)(g) of the Constitution is not absolute. By virtue of the provisions of Clause (6) to Article 19 reasonable restrictions can be imposed. The Court has a duty to strike a balance between the right of a Vaidya to practice, particularly, when he does not possess the requisite qualification and the right of a "little Indian" guaranteed under Article 21 of the Constitution which includes the protection and

safeguarding the health and life of a public at large from mal-medical treatment. An unqualified, unregistered and unauthorized medical practitioner possessing no valid qualification, degree or diploma cannot be permitted to exploit the poor Indians on the basis of a certificate granted by an institution without any enrolment of students or imparting any education or having any affiliation or recognition and that too without knowing the basic qualification of the candidates.

Question of entertaining the issue of validity of Entry No.105 to the Second Schedule to the Act 1970 i.e. “to 1967” does not arise as it is not a cut-off date fixed by the Statutory Authority rather a date, after which the qualification in question was not recognised. Hindi Sahitya Sammelan itself admitted that the Society was not imparting any education. It had no affiliated colleges. It merely conducts the test. The Society never submitted any application after 1967 before the Statutory Authority to accord recognition and modify the Entry No.105 to Part I of Schedule II to the Act 1970.

Submissions to the effect that 1953 Act conferred privileges upon the Vaidyas in exceptional circumstances to practice and any restriction to practice unless the names are entered in the Central Register is arbitrary and violative of statutory provisions of the State

Act, are preposterous for the reason that such privileges, if are repugnant to the provisions of Act 1970, cannot be availed by operation of the provisions contained in Article 254 of the Constitution. Thus, such a restriction can not be held violative of equality clause enshrined in Article 14 of the Constitution.

43. At the cost of repetition, it may be pertinent to mention here that in view of the above, we have reached to the following inescapable conclusions :-

(I) Hindi Sahitya Sammelan is neither a University/Deemed University nor an Educational Board.

(II) It is a Society registered under the Societies Registration Act.

(III) It is not an educational institution imparting education in any subject inasmuch as the Ayurveda or any other branch of medical field.

(IV) No school/college imparting education in any subject is affiliated to it. Nor Hindi Sahitya Sammelan is affiliated to any University/Board.

(V) Hindi Sahitya Sammelan has got no recognition from the Statutory Authority after 1967. No attempt had ever been made by the Society to get recognition as required under Section 14 of the Act, 1970 and further did not seek modification of entry No. 105 in II Schedule to the Act, 1970.

(VI) Hindi Sahitya Sammelan only conducts examinations without verifying as to whether the candidate has some

elementary/basic education or has attended classes in Ayurveda in any recognized college.

(VII) After commencement of Act, 1970, a person not possessing the qualification prescribed in Schedule II, III & IV to the Act, 1970 is not entitled to practice.

(VIII) Mere inclusion of name of a person in the State Register maintained under the State Act is not enough making him eligible to practice.

(IX) The right to practice under Article 19(1)(g) of the Constitution is not absolute and thus subject to reasonable restrictions as provided under Article 19(6) of the Constitution.

(X) Restriction on practice without possessing the requisite qualification prescribed in Schedule II, III & IV to the Act, 1970 is not violative of Article 14 or ultra vires to any of the provisions of the State Act.

44. The instant cases have to be determined strictly in consonance with the law laid down by this Court referred to hereinabove and, particularly, in **Ayurvedic Enlisted Doctor's Assn.** (supra). The observation made by the Rajasthan High Court to the extent that persons who possessed the certificate upto 1.10.1976 i.e. the date on which the provisions of Section 17 had been enforced in the State of Rajasthan is not in consonance with the law laid down by this Court in

the above referred cases. Therefore, that observation is liable to be set aside.

45. In view of the above, Civil Appeal arising out of SLP (C) No. 21043 of 2008 is allowed and it is held that a person who acquired the certificate, degree or diploma from Hindi Sahitya Sammelan Prayag after 1967 is not eligible to indulge in any kind of a medical practice. All other Civil Appeals are dismissed. No costs.

……..J.
(Dr. B.S. CHAUHAN)

……..J.
(SWATANTER KUMAR)

New Delhi,
June 1, 2010