

A.F.R.
Reserved

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Civil Misc. Writ Petition No. 1546 of 2003

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Umakant Tiwari & 39 others vs. State of U.P. & 6 others

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Hon'ble Ashok Bhushan, J.

Hon'ble Arun Tandon, J.

(Delivered by **Hon'ble Arun Tandon, J.**)

The present writ petition was decided under judgment and order of a Division Bench of this Court dated 21st May, 2003, wherein it has held that Hindi Sahitya Sammelan, Allahabad is a fake institution whereas Hindi Sahitya Sammelan Prayag was recognised only for the period 1931 to 1967, qua the degrees of Vaidya Visharad and Ayurved Ratna. It was, therefore, held that degrees obtained from Hindi Sahitya Sammelan, Prayag subsequent to 1967 were not recognised and those like the petitioners who had obtained such degrees after 1967 are not entitled to practice Indian Medicine. The Division Bench further observed that it did not find any unconstitutionality in Entry 105 of Second Schedule, Part-1 of Indian Medicine Central Council Act, 1970 (hereinafter referred to as the 'Act, 1970') or any infirmity in Section 14 of Act, 1970.

The Division Bench Judgement and order of this Court dated 21st May, 2003 was subjected to challenge before the Hon'ble Supreme Court of India by way of Civil Appeal Nos. 1453 of 2004, 1454 of 2004, 5080 of 2005 and 7573 of 2005. The Apex Court, by means of the judgment and order dated 25th May, 2007, set aside the Division Bench judgement of this Court and remanded the matter to this Court to decide the same afresh after affording opportunity of hearing to the Hindi Sahitya Sammelan and to consider the contention raised qua constitutionality of provisions of various Acts.

On remand the Division Bench of this Court issued fresh notices to respondent nos. 3, 4, 5 and 7 vide order dated 14th September,

2007. Sri Surendra Prasad, Advocate filed his appearance on behalf of Hindi Sahitya Sammelan, Allahabad as well as Hindi Sahitya Sammelan, Prayag. Sri J.K. Tiwari, Advocate filed his appearance on behalf of Board of Indian Medicines, U.P. Lucknow (respondent nos. 4 and 5).

Since vires of various Sections of Act, 1970 as well as of various Sections of U.P. Indian Medicine Act, 1939 (hereinafter referred to as the 'Act, 1939') were challenged, notices were issued to Attorney General of India as well as to the Advocate General of State of Uttar Pradesh. This Court vide order dated 21st February, 2008 required the learned Counsel for Hindi Sahitya Sammelan to file such documents, as he may be advised for establishing that it had been authorised by law to impart education in any discipline in medical science as well as to bring on record the notification by which the Hindi Sahitya Sammelan had been derecognised in 1967.

On behalf of Hindi Sahitya Sammelan, Allahabad i.e. respondent no.6, Sri Jeevan Prakash Sharma, Advocate subsequently appeared and filed counter affidavit, on behalf of Hindi Sahitya Sammelan Allahabad. A statement has been made before this Court that respondent no.7, Hindi Sahitya Sammelan, Prayag has ceased to exist in the eyes of law. However, this Court required that fresh notice be issued to respondent no.7 vide order dated 14th October, 2008. Accordingly notices by registered post were issued by the Registry of this Court on 18th October, 2008. Service upon respondent no.7 was deemed sufficient under order of this Court dated 28th August, 2009.

The present writ petition along with connected Civil Misc. Writ Petition No. 36307 of 2001 has been heard. Sri R.K. Jain, learned Senior Advocate assisted by Sri Rahul Jain, Advocate on behalf of petitioners, Sri J.K. Tiwari, learned counsel for respondent nos. 4 and 5, Sri S.S. Tiwari, learned counsel for Union of India, respondent no. 2 and Sri Jeevan Prakash Sharma, learned counsel for respondent no.6 and Sri M.C. Chaturvedi, learned Chief Standing Counsel, for the State-respondent have been heard. After the arguments were completed, judgment was reserved with liberty to the parties to file their written submissions.

The facts in short relevant for deciding the controversy raised in the present writ petitions are as follows:

Petitioners before this Court, who are 40 in number, claim that they

have obtained degree of Ayurved Ratna and Vaid Visharad from Hindi Sahitya Sammelan, Allahabad, except petitioner nos.8, 9, 25, 26, and 30 who are stated to have obtained the same degrees from Hindi Sahitya Sammelan, Prayag. It is further stated that petitioners have got themselves registered as Ayurvedic Vaidyas with Rajkiya Ayurvedic Evam Unani Chikitsa Parishad, Patna, Bihar established under the Bihar Development of Ayurvedic & Unani System of Medicines Act, 1951, except the petitioner nos. 22, 23, 24 and 27, who claim to be registered with Madhya Pradesh Ayurvedic Tatha Unani Chikitsa Padhati Evam Prakritik Chikitsa Board, Bhopal. Petitioners claim to be practising medicine in difference areas of State of Bihar and Madhya Pradesh. It is their case that they want to practice medicine in the State of Uttar Pradesh as they are resident of Uttar Pradesh or adjoining area of State of Madhya Pradesh. Petitioners approached the Registrar, Board of Indian Medicines, U.P. Lucknow to accept their applications for registration as medical practitioners (Ayurvedic) under Section 50 of Act, 1939, but such registration has been refused. Hence the petition.

By means of the present writ petition, petitioners initially prayed for a writ of mandamus declaring the words "upto 1967" in IV Column of Entry No. 105, Second Schedule, Part-I of Act, 1970 as ultra vires to Section 14 (1) of Act, 1970 as well as to declare Section 14 of Act, 1970 as ultravires of Article 14 of the Constitution of India and lastly for declaring Section 27 (1), Section 50(2) and Section 51 and the Schedule of Act, 1939 as ultravires of Section 14 of Act, 1970 and Article 254 of the Constitution of India. A writ of mandamus has also been prayed to be issued restraining the respondents from interfering in practice of the petitioners as Vaidya in Ayurvedic System of Medicine and Surgery in the State of Uttar Pradesh, as well as to recognise the degrees of Ayurved Ratna and Vaidya Visharad granted by Hindi Sahitya Sammelan Allahabad/Prayag as legal and valid for registration of the petitioners under Act, 1939. Under Amendment Application No. 273131 of 2007, which was granted on 1st September, 2008, prayers for declaring the provisions of Act, 1939 as repugnant to Act, 1970 and therefore, impliedly repealed under Article 254 (1) of the Constitution of India, and further declaring Section 27 (1), 28, 50 and 52 of Act, 1939 as inconsistent and violative of Article 14 of the Constitution of India and therefore, void under

Article 13 (1) of the Constitution of India have been added.

On behalf of the petitioners it has been contended before this Court that Section 14 of Act, 1970 confers unguided and un-canalised powers upon the Medical Council of India qua inclusion of degrees in the Schedule and therefore arbitrary, thus violative of Article 14 of the Constitution of India. The Ayurved Ratna and Vaidya Visharad granted by Hindi Sahitya Sammelan after 1967 have been excluded for no reason. On the same reasoning the words 'upto 1967' as added against item no. 105 of Second Schedule of Act, 1970 are also stated to be violative of Article 14 of the Constitution of India. In support of the plea, it is further submitted that under Act, 1970 which came into force in 1976, Central Council of India Medicines was to be constituted and such constitution in fact took place in 1980 only. Thus on the date, the Second Schedule was prepared/added in the Act, 1970, there was no Central Council in existence, thus, there was no expert body to advise the Parliament on the question of standard of degrees of Ayurved Ratna and Vaidya Visharad granted by Hindi Sahitya Sammelan, Prayag. Various sections of Act, 1970 including Section 22 of the Central Act, 1970 provide that the Central Council shall prescribe minimum standards of education of recognised medical qualifications. In absence of any such Central Council, there was no material or evidence or experts opinion before the Parliament to restrict the validity of degrees or certificates granted by the Hindi Sahitya Sammelan upto 1967 only. Prior to 1967 and even after 1967, standard of education and curriculum in respect of aforesaid two degrees granted by Hindi Sahitya Sammelan is one and the same, therefore, there is little or no basis for directing that the degrees granted by Hindi Sahitya Sammelan, Prayag upto 1967 alone are valid while those granted subsequent to 1967 are invalid. It is contended that there is no reasonable basis for any such distinction being made, the provisions of Section 27, 50, 51 and Third Schedule of Act, 1939 have been questioned on the ground that they are pre-constitutional and being violative of Article 14 of the Constitution of India, have to be declared invalid as such. Reliance in that regard has been placed upon the judgement of the Hon'ble Supreme Court of India in the case of **Hamdard Dawakhana vs. Union of India** reported in *AIR 1960, SC 554, specifically paragraphs 8, 14, 34, and 35*. Inconsistency with Article 13 (1) of the Constitution of India has also been

pleaded. Similarly Section 27 of Act, 1939 has been challenged on the ground that it lays down unguided and un-canalised powers for recognising the qualifications mentioned in the Schedule, as a result whereof Sections 50 and 51 of Schedule are also rendered arbitrary. Lastly it is stated that provisions of Act, 1939 being repugnant to Act, 1970 are rendered void under Article 254 (1) of the Constitution of India.

A counter affidavit has been filed on behalf of the State-respondents and it is contended that Government of India under the provisions of Act, 1970 has established a Central Council of India Medicines, for regulating amongst others the Ayurveda, Siddha, and Unani System of Medicines. The Central Council with the sanction of Government of India has prescribed 5-1/2 years degree course for Ayurveda BAMS, Unani (Kamil-e-Jarahat) BUMS and Siddha (Siddha Maruthyam Arignar) BAMS. Recognised medical qualification as per Section 2 (1) (h) of Act, 1970 have been provided. After 1st October, 1976 only those persons, who have a medical qualifications included in the Second, Third or Fourth Schedules of Act, 1970 are eligible for registration and practice of Indian Systems of Medicine in view of Section 17 of Act, 1970. It is clarified that the petitioners are not possessed of any degree included in the aforesaid Schedules nor medical degrees obtained by them from Hindi Sahitya Sammelan, Prayag/Allahabad are recognised for any purpose whatsoever under Act, 1970, (except for the degree of Vaidya Visharad and Ayurveda Ratna awarded by the Hindi Sahitya Sammelan, Prayag between 1931 to 1967, which are included in the Second Schedule of Act, 1970). The certificates relied upon by the petitioners are bogus and are of no legal consequence. Reliance in that regard has been placed upon the judgement of Hon'ble Supreme Court of India in the case of **Delhi Pradesh Registered Medical Practitioners vs. Director of Health Services**, reported in 1997 (11) SCC 687, wherein it has been held that the degree awarded by the Hindi Sahitya Sammelan Prayag between 1931 to 1967 alone were recognised. It is for this reasons that the applications of the petitioners for registration under Act, 1939 have not been acted upon. Reliance has also been placed upon the judgment of this Court in the case of **Dr. Vijai Kumar Gupta & Ors. vs. State of U.P. & Ors.**, reported in 1999(2) UPLBEC 1063 for the same purpose.

The plea of vires raised on behalf of the petitioners has been opposed

by the State-respondents and it has been contended that except for making vague and general allegations, there is no substantive challenge to the vires of the statutory provisions noticed above. Sri M.C. Chaturvedi, learned Chief Standing Counsel for the State-respondent as well as Sri S.S. Tiwari, learned counsel for Central Council of Indian Medicine, have taken the Court to various provisions of Act, 1970 as well as Act, 1939 for establishing that the plea raised has no substance.

He clarifies that the Act, 1970 has been enacted by the Parliament with reference to Entry-66 of List-1 i.e. Union List and Entry No. 26 of List III i.e. concurrent List as per the Seventh Schedule of the Constitution of India. Section 2 of Act, 1970 provides for the definitions for the purposes of the Act. Section 2 (h) of Act, 1970 defines the recognised medical qualifications. He points out that Section 14 of Act, 1970, which came into force on 15th August, 1971, provides that the medical qualification granted by University or Board or other medical institution in India as disclosed in Second Schedule shall be recognised medical qualifications for the purposes of the Act and any University, Board or any other medical institution, which grants any other medical degree/qualification not included in the Second Schedule may apply to the Central Government for such qualifications being recognised. Central Government has been conferred power to add/amend the Second Schedule accordingly. He points out that neither the petitioners nor the Hindi Sahitya Sammelan had disclosed any steps having been taken subsequent to the publication of Second Schedule of Act, 1970, with reference to Section 14 (2) for getting the degrees of Vaidya Visharad and Ayurved Ratna granted subsequent to 1967 to be included in the Second Schedule. It is further stated that despite specific order of the Court dated 21st February, 2008, neither the petitioners nor the Hindi Sahitya Sammelan have disclosed any authority under law to impart education in any discipline of medical sciences. He has vehemently stated that no certificate or degree can be granted for practising medicine without any practical experience/practical classes for the purpose having been undertaken. He submits that classification of degrees recognised under the Act, 1970 is a reasonable classification in the best interest to the health and safety of the public at large, inasmuch as right to practice medicine in whatever field has to be regulated and only qualified person can be given

such a right. A person not possessed of a recognised qualification cannot be permitted to practice medicine. He submits that there is always a presumption in favour of the constitutionality of an enactment, and the burden is upon the person, who attacks it, to show that there has been a clear violation of Article 14 of the Constitution of India. Vague and general allegations are not sufficient to declare the statutory provisions as ultra vires.

He explains that in view of the law declared by the Hon'ble Supreme Court of India in the case of **Pramod Kumar vs. U.P. Secondary Education Services Commission & Ors.** reported in (2008) 7 SCC 153, no University can be established by a private management without any statutory backing. The degrees of Vaidya Visharad and Ayurved Ratna granted by Hindi Sahitya Sammelan, Prayag between 1931 to 1967 have been declared valid and recognised under Act, 1970 on the basis of information furnished by the State Government of Uttar Pradesh.

Lastly it is pointed out that in the counter affidavit filed on behalf of Hindi Sahitya Sammelan by Radhe Shyam Pandey sworn on 11th March, 2008, it has been stated that judgment and order of this Court dated 4th December, 1996 passed in Civil Misc. Writ Petition No. 9802 of 1982 has been challenged by way of Special Leave Petition No. 6344 of 1997 and the said special leave petition is pending before the Hon'ble Supreme Court of India (reference paragraph 28 of Counter affidavit filed on behalf of Hindi Sahitya Sammelan, Allahabad), when as a matter of fact, the special leave petition no. 6344 of 1997 had been decided under order dated 23rd November, 1998 and therefore, the counter affidavit filed on behalf of Hindi Sahitya Sammelan contains deliberate incorrect statement of facts.

A separate counter affidavit has been filed on behalf of Hindi Sahitya Sammelan, Allahabad. Sri Jeevan Prakash Sharma, learned counsel for Hindi Sahitya Sammelan, Allahabad has only reiterated the legal submissions, which have been advanced on behalf of the petitioners. However, he has fairly stated that Hindi Sahitya Sammelan does not grant affiliation to any institution for imparting education in medical courses. Hindi Sahitya Sammelan infact 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.

Before adverting to the various legal contentions raised on behalf of the parties it would be worthwhile to refer to the various constitutional/statutory provisions applicable on the subject.

In Part-XI of the Constitution of India, under Articles 245 to 255 legislative powers have been conferred upon the Parliament as well as upon the States Legislatures. The Parliament has the power to make laws for whole or any part of the territory of India, in respect of subjects as contained in List I of the Seventh Schedule i.e. Central List or in List III that is Concurrent List. The Legislature of any State on the other hand has the power to legislate/make laws on the subject enumerated in List II as well as in List III (Concurrent List) in the Seventh Schedule for whole or any part of the State.

As per Entry-66 of List-1 i.e. Union List as contained in Seventh Schedule of the Constitution of India, the Parliament has the legislative powers to make laws pertaining to Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Such powers also flow from Entries 25 and 26 of List III i.e. Concurrent List of Seventh Schedule, which includes medical education also. As per Entry-6 of List II of Seventh Schedule, the State Legislature has powers to make laws pertaining to public health and sanitation i.e. hospitals and dispensaries. The United Provinces Indian Medicine Act, 1939 being a pre-constitutional Act was modified and adopted under Adaptation of Laws Order, 1950 with the enforcement of the Constitution of India. Section 27 of Act, 1939 was substituted by U.P. Act No. VII of 1956 and it is provided as follows:

“27. Persons entitled to be registered.-- (1) Every person possessing the qualification mentioned in the Schedule shall, subject to the provisions contained in or made under this Act and upon payment of such fees, whether in a lump sum or periodically, as may be prescribed, be entitled on an application made to the Registrar, **to have his name entered in the Register**. When the name of a person has been registered in accordance with the provision aforesaid he shall be granted a certificate in the prescribed form.

(2) Any person aggrieved by the order of the Registrar refusing to entry his name in the Register or to make any entry therein may, within ninety days of such refusal,

appeal to the Board.

(3) The appeal shall be heard and decided by the Board in the prescribed manner.

.....

The Schedule to the Act, 1939 reads as follows:

“THE SCHEDULE

(See Sections 27, 28, 29 and 30)

Persons **who are entitled to have their names entered in the register of Vaidyas and Hakims--**

(1) Vaidyas and Hakims who hold a degree or certificate of any Government Ayurvedic or Unani College or School within the Uttar Pradesh or outside it, or a degree in Indian Medicine or surgery or midwifery of any University established by law in Indian.

(2) Vaidyas and Hakims who hold a degree or diploma granted by the Board.

(3) Vaidyas and Hakims who have passed an examination from any Ayurvedic or Unani Institution in the Uttar Pradesh or outside it recognised by the board for purposes of registration.

(4) [***]”

The Parliament in exercise of powers vested in it has framed the Indian Medicine Central Council Act, 1970 (Act No. 48 of 1970), wherein a Central Council of Medicine has been constituted. It further provides for maintenance of a Register.

For our purposes, it would be worthwhile to reproduce the provisions of Sections 2 (h) and 2 (j) and Sections 14 and 17 of Act, 1970, which read as follows:

“2. Definitions.---(1).....

(h) “recognised medical qualification” **means any of the medical qualifications, including post-graduate, medical qualification, of Indian medicine included in the Second, Third or Fourth Schedule.**

.....

(j) “State Register of Indian Medicine” means a register or registers maintained under any law for the time in force in any State regulating the registration of practitioners of Indian Medicine.”

“14. Recognition of medical qualifications granted by certain medical institutions in India.- (1) The medical

qualifications granted by any University, Board or other medical institution in India which are included in the Second Schedule shall be recognised medical qualifications for the purpose of this Act.

(2) Any University, Board or other medical institution in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have any such qualification recognised, and the Central Government, after consulting the Central Council, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date."

"17. Rights of persons possessing qualifications included in Second, Third and Fourth Schedules to be enrolled.---(1) Subject to the other provisions contained in this Act, any medical qualification included in the Second, Third or Fourth Schedule shall be sufficient qualification for enrolment on any State Register of India Medicine.

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

.....

(b) shall practise India medicine in any State;

.....

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

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

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

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

(d) the rights conferred by or under the Indian

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

Sections 18, 19, 20, 21 and 22 of Act, 1970 deal with power to require information as to courses of study and examinations, Inspectors at examinations, Visitation at examinations, Withdrawal of recognition and Maintenance of Minimum standards of education in Indian medicine.

Section 24 of Act, 1970 reads as follows:

“24. Supply of copies of State Register of Indian Medicine.---Each Board shall supply to the Central Council three printed copies of the State Register of Indian Medicine as soon as may be after the commencement of this Act and subsequently after the first day of April of each year, and each Board shall inform the Central Council without delay of all additions to and other amendments in the State Register of Indian Medicine made from time to time.”

Entry 105 of Part-I of Second Schedule of Act, 1970 reads as follows:

“THE SECOND SCHEDULE

(See Section 14)

**RECOGNISED MEDICAL QUALIFICATIONS IN INDIAN MEDICINE
GRANTED BY UNIVERSITEIS, BOARDS OR OTHER MEDICAL
INSTITUTIONS IN INDIA**

<i>Name of University, Board or Medical Institution</i>	<i>Recognised Medical Qualifications</i>	<i>Abbreviation for Registration</i>	<i>Remarks</i>
1	2	3	4

PART 1---AYURVEDA AND SIDDHA

.....

Uttar Pradesh

99.

105	Hindi Sahitya Sammelan, Prayag	Vaidya Visharad Ayurved-Ratana	From 1931 to 1967 From 1931 to 1967
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It is not the case of the petitioners that they have degrees or certificates from any Government Ayurvedic or Unani College or School or from any University established by law in India nor they have been granted any degree or diploma by the Board nor their degree has been recognised by the Board of Indian Medicine, U.P. for the purposes of registration. Reference may also be had to Section 50 of Act, 1939 which requires the preparation of "List of persons in practice belonging to the indigenous system" by the Registrar of the Board.

It will be seen that under Section 14 (2) of Act, 1970 any University or Board or any other medical institution, which was granting the medical qualification not included in the Second Schedule had a right to apply to the Central Government for its medical qualification to be recognised and included in the Second Schedule. The Central Government has been conferred a power to examine the grievance and to make necessary amendments as and when required for inclusion of such additional medical qualification in the Second Schedule.

At this stage itself, this Court may record that no application was ever made by the Hindi Sahitya Sammelan, Allahabad/Prayag to get its medical qualifications i.e. Vaidya Visharad and Ayurved Ratna recognised 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 recognised and included in the Second Schedule, no effort has been made by the Hindi Sahitya Sammelan for the purpose.

This Court may add that a right to life is guaranteed under Article 21 of the Constitution includes the protection and safeguarding of the health and life of public at large from mal-medical treatment. No unqualified, unregistered, unauthorised medical practitioner, not possessed of valid qualification/degree can be permitted to exploit the poor Indian on the garb of certificate granted by the institution having no statutory backing.

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 Sammelanand, 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 reason disclosed by the State-respondents 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.

Vague allegations that cut off year i.e. 1967 is arbitrary alone have been made. In the opinion of the Court Central Legislation cannot be termed as arbitrary or violative of Article 14 of the Constitution of India on such vague and general allegations. It is settled law that there has to be a presumption of constitutionality of an Act of Legislature and it is for the petitioners to establish by material brought on record that the same is otherwise. Reference in that regard may be had to the Judgements of the Hon'ble Supreme Court of India in the cases of **Bharat Hydro Power Corporation Ltd. & Ors. vs. State of Assam & Ors.** reported in *AIR 2004 SC 3173*, **State of Maharashtra vs. Bharat Shanti Lal Shah and others** reported in *(2008) 13 SCC 5*.

The Hon'ble Supreme Court of India in the case of **N. Kannadasan vs. Ajay Khose & ors.** reported in *(2009) 7 SCC 1*, **M. Rathinaswami & ors. vs. State of Tamil Nadu & Ors.** reported in *(2009) 5 SCC 625* has further laid down that every attempt should be made to save the Statute from becoming unconstitutional. In view of the aforesaid, challenge to the cut off year mentioned in the Second Schedule of Act, 1970 has necessarily to be repealed.

This takes the Court to the challenge to the vires of Section 14 of Act, 1970. The competence of the Parliament to frame the law on the subject concerned is not in dispute. The Parliament infact has exercised its legislative powers in the larger interest of public and has provided that no person shall be entitled to practice medicine without being possessed of medical qualifications granted by any University or Board or any other medical

institution. This in turn results in a person not possessed of such medical qualification to be refused registration as medical practitioner and therefore, debarred from practising medicine under Section 17 of Act, 1970. Such statutory provisions are framed in the best interest of public for protecting and safeguarding its health and medical treatment, which is a responsibility of the State flowing from Article 21 of the Constitution of India. Therefore, this Court holds that challenge to Section 14 of Act, 1970 is totally uncalled for.

This Court may now deal with the plea raised by the learned counsel for the petitioners that since the Expert body under Act, 1970 i.e. Central Council of Indian Medicine as per Section 3 has been constituted in the year 1980, there was no expert body to guide the legislature qua grant of recognition of degrees to be included in the Second Schedule to the Act, 1970. In the opinion of the Court the State Legislature/Parliament has all the experts available to it for the purposes of advising on a particular subject within its legislative competence. If the Legislature comes out with a Schedule dealing with degrees/qualifications, which are to be recognised under the Act, it cannot be said that it had no expert opinion for the purpose. The constitution of Central Council of Indian Medicine under Act, 1970 is for different purpose, namely, for furtherance of the objects of the Act. The competence of the Parliament to frame the Schedule is being questioned on a totally misconceived ground. The competence of the Legislature to legislate on a subject, within its ambit, includes the framing of the Schedule. The knowledge attributable to the legislation is all pervasive, it has with it the services of the experts on the subject.

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 Vishara 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.

This Court is not ready to accept the plea that since the Legislature has accepted the degrees upto 1967 awarded by the Hindi Sahitya Sammelan as valid, subsequent degrees granted be similarly recognised. What may have prevailed with the legislature for recognising the degrees upto 1967 granted by the Hindi Sahitya Sammelan, this Court in absence of material facts qua education which is obtained by the candidate entitled to appear in the examination conducted by the Hindi Sahitya Sammelan for awarding medical degrees, cannot grant permission to them to practice medicine.

At this stage, this Court may refer various judgements of the Hon'ble Supreme Court of India as well as of the Hon'ble High Court, wherein right to practice with reference to the degrees not recognised under Schedule II of Act, 1970 has been repelled time and again. The first judgment on the subject is the judgment in the case of **Delhi Pradesh Registered Medical Practitioners vs. Director of Health, Delhi Admn. Services & Ors.**, reported in (1997) 11 SCC 687, wherein the Hon'ble Supreme Court with reference to the degrees granted by Hindi Sahitya Sammelan has specifically held that degrees granted between 1931 to 1967 alone are valid for permitting a person to practice medicine. In the case of **Dr. Vijai Kumar Gupta (Supra)**, the Supreme Court has held that degrees granted by the Hindi Sahitya Sammelan subsequent to 1967 are not recognised and therefore, persons, possessed of the such degrees subsequent to 1967 are not entitled to practice medicine. In the Case of **Indrasen Verma vs. Union of India & Ors.**, and **Dr. Jal Singh vs. Union of India & Ors.**, reported in 2004 (2) ESC 984 (All.) a Division Bench of this Court has held that any qualification not recognised under Schedule II of Act, 1970 cannot confer a right to practice medicine in the State of Uttar Pradesh. In the case of **Electro Homoeopathic Practitioners Association of India & Anr. vs. A.P. Verma, Chief Secretary, Government of U.P. & Ors.**, reported in 2004 (2) 1241 (All.) and in the case of **Charan Singh & Ors. vs. State of U.P. & Ors.**, reported in AIR 2004 All. 373, it has been held that degrees of Vaidya Visharad and Ayurved-Ratna awarded by Hindi Sahitya Sammelan except for the period 1931 to 1967 were invalid and it has been further declared that Hindi Sahitya Sammelan has no authority of law to continue to confer aforesaid degrees after 1967. To similar

effect is the judgment of Division Bench of this Court dated 5th January, 2007 passed in a writ petition in the case of **Dr. Mahesh Kumar Nayak vs. State of U.P. & Ors.**

This Court may also refer to the judgment of the Hon'ble Supreme Court of India in the case of **Pramod Kumar (Supra)**, wherein it has been held that recognised degree can only be granted 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, 1860. The competence to grant medical degree under any provisions of law is therefore, wanting.

Now coming to the plea qua declaring the Act, 1939 being repugnant to Act, 1970. As a matter of fact such plea has only been stated as an after thought by the present petitioners. No specific pleas have been raised nor it is disclosed as to which part of the two Acts cannot be reconciled.

So far as challenge to Sections 27 (1), 28, 50 and 52 of Act, 1939 and Schedule being ultravires of Section 14 of Act, 1970 is concerned, this Court may only record that such contention has not been seriously pressed before this Court except for stating that the aforesaid Sections and Schedule are violative of Article 14 of the Constitution of India and being inconsistent with said Article are void. In respect of Section 27 of Act, 1939 it is stated that it does not lay down any guidelines and is therefore, bad. The Court is of the considered opinion that such vague allegation without any factual foundation and without any material being placed in support have only been stated to be rejected. The competence of the State Government to legislate on the subject has not been disputed. What parts of Section are violative of Article 14 of the Constitution of India and in what manner has not been disclosed, the plea that powers are un-canalised under Section 27 of Act, 1939 is also too general a proposition to be accepted by this Court. Section 27 of Act, 1939 as a matter of fact lays down the qualification mentioned in the Schedule alone to be valid for inclusion of the name of the person in the State Register. The power to make amendment in the Schedule is provided under Section 28 of Act, 1939. The Schedule to Act, 1939 is more or less same as that provided under Act,

1970. The Schedule infact recognises only those degrees/certificates which are issued by the institution established by the Government or degrees awarded by the University established by law or recognised by the Board. Such prescription of the qualifications for being registered as medical practitioner cannot be termed to be arbitrary or violative of Article 14 of the Constitution. The Guidelines for recognition of degrees granted is writ large on the language of Schedule itself. The power to seek amendment of the Schedule as contained under Section 28 of Act, 1939, which is paramateria to Section 14 (2) of Act, 1970 has not been exercised and therefore, for the same reasons challenge to Section 27 of Act, 1939 and the Schedule attached thereto has to be repelled.

So far as the repugnancy between Act, 1970 and Act, 1939 is concerned, this Court may record that there is no inconsistency between the Act of State Legislature with the Act of Parliament, both can be harmonised. They do not in any way come in inflict as suggested by the learned counsel for the petitioners before. The plea of repugnancy would only arise, if there is a conflict, between the Sate Act and Central Act, which cannot be reconciled. The Division Bench of this Court in the case of **Hakim Musharraf Ali Usmani vs. State of U.P. & Anr.** Reported in *2006 (1) ADJ 257*, specifically in paragraph-5, has held that those medical practitioners who have qualifications from the institution duly included in Second Schedule of Act, 1970 and from the colleges referable to U.P. Act of 1939 and U.P. Act of 1982 can be registered under Act, 1970 with the Board of Indian Medicine in the State of Uttar Pradesh.

In view of the aforesaid, the plea raised on behalf of the petitioner as well as on behalf of of Hindi Sahitya Sammelan for challenging vires of the various provisions of U.P. Act, 1939 and Central Act, 1970 are hereby repelled. It is held that any degree granted by the Hindi Sahitya Sammelan subsequent to 1967 cannot be recognised nor can be treated to be a valid qualification for being registered as medical practitioner under the State Act, 1939 or the Central Act, 1970.

The writ petition is accordingly dismissed. There shall be no orders as to costs.

23.10.2009

Sushil/-