

and allowed him to continue for three semesters, it has no power to withdraw his candidature.

(16) In view of the above discussion, I quash the order dated 9th/14th December, 1985 Annexure P. 4 of the Principal of respondent No. 2 and issue a writ of *mandamus* directing respondent No. 2 to allow the petitioner to continue with his studies in the Course for Degree in Engineering (Civil) in the Institute. There shall, however, be no order as to costs.

R.N.R.

Before D. S. Tewatia and D. V. Sehgal, JJ.

SARWAN SINGH DADRI,—Petitioner.

versus

STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 2204 of 1986.

September 17, 1986.

Indian Medical Council Act (CII of 1956)—Section 15(2) (b)—Indian Medicine Central Council Act (XLVIII of 1970)—Section 17(2) (b)—Punjab Ayurvedic and Unani Practitioners Act (XLII of 1963)—Section 15 (1)—Drugs and Cosmetics Rules, 1945—Rules 2 (ee) (iii)—Persons qualified to practice the Indian System of medicine enrolled on the State or Central Register maintained for registration of such practitioners—Persons aforesaid—Whether entitled to practice the modern system of medicine—Notification issued by the Punjab Government under Rule 2 (ee) (iii) of the Drug Rules, declaring such practitioners as persons entitled to practice the modern system of medicine for the purposes of the Drugs Act—Such medical practitioners—Whether entitled to practice the modern system of medicine—Said notification—Whether ultra vires the provisions of 2 (ee) (iii) of the Drug Rules and liable to be struck down.

Held, that medical practitioners registered under section 15 (1) of the Punjab Ayurvedic and Unani Practitioners Act, 1963 are not equipped with professional qualifications to practice the Modern System of Medicine as they do not possess any prescribed diploma or degree from a recognised medical institution in modern system of medicine. Even a person who has acquired the prescribed diploma or degree from a recognised medical institution is not entitled to practice Modern System of Medicine unless he is so registered, for Section 15 (2) (b) of the Indian Medical Council Act, 1956

Sarwan Singh Dadri v. State of Punjab and others (D. S. Tewatia, J.)

expressly prohibits the person who is not so registered to practice the Modern System of Medicine. The person, who can be so registered should have acquired the prescribed qualifications laid down in the said Act. The concomitant of this disability is that such practitioners cannot prescribe allopathic drugs to their patients and if they cannot prescribe such medicines, they cannot administer such drugs on the basis of a prescription. It would also not be lawful for such registered medical practitioners to stock or store such medicines for the purpose of administering them to patients. The rule-making authority could not have intended by adding sub-clause (iii) of clause (ee) of rule 2 of the Drugs and Cosmetics Rules, 1945, that registered medical practitioners of the Indian System of Medicine should be included in the category of registered medical practitioners of Modern Scientific System of Medicine. If this is so it would be setting at naught the provisions of Section 15(2) (b) of the Indian Medical Council Act, 1956, and Section 17(2) (b) of the Indian Medicine Central Council Act, 1970, which prohibits persons other than those who are registered under the Indian Medical Council Act from practising modern system of medicine. Therefore, it has to be held that the registered medical practitioners on the strength of the aforesaid notification cannot be treated in law as registered medical practitioners of Modern Scientific System of Medicine and consequently not entitled to practice the same and as such the notification issued by the State Government is *ultra vires* the provisions of sub-clause (iii) of clause (ee) of Rule 2 of the Drug Rules and is liable to be struck down.

(Partly over-ruled).

Phool Singh vs. State of Haryana, Criminal Revision No. 1617 of 1984 decided on 20th September, 1985.

(Party over-ruled).

Writ petition under Article 226 of the Constitution of India praying that the records of the case be sent for and after perusing the same:—

- (i) issue a writ of mandamus directing the respondents to permit the petitioner to practice in the modern system of medicines according to Annexure P-2 as a Registered Medical Practitioner in Punjab State;
- (ii) direct the respondents not to interfere in the practice of the petitioner ;
- (iii) filing of the certified copies of the Annexures be dispensed with ;
- (iv) service of advance notices on the respondents be dispensed with ;

(v) costs of the petition be also awarded to the petitioner.

AND

It is further prayed that the petitioner be allowed to practice as Registered Medical Practitioner in the Modern System of Medicine, under the Drugs and Cosmetics Act/Rules, during the pendency of this Writ Petition.

H. S. Nagra, Advocate, for the Petitioner.

H. S. Riar, D.A.G., Punjab, for the Respondents.

Respondent No. 3—in person.

JUDGMENT

D. S. Tewatia, J. :

(1) The petitioner, Dr. Sarwan Singh, has impugned in the present writ petition the action of respondent No. 4 the District Drugs Inspector, Hoshiarpur, who had prohibited him from keeping in his possession any allopathic drug for administration to the patients and who had further directed the chemists not to issue allopathic medicines to such patients as had been prescribed or were to be prescribed such medicines by the petitioner.

(2) The case set up in the petition by the petitioner is that he is a Registered Medical Practitioner and had been so registered with the Board of Ayurvedic and Unani Systems of Medicines, Punjab, respondent No. 3,—vide registration certificate annexure P.1., that by notification, dated 29th October, 1967, annexure P.2, issued under sub-clause (iii) of clause (ee) of rule 2 of the Drugs and Cosmetics Rules, 1945 (for short to be referred as 'the Drug Rules') made under the provisions of the Drugs and Cosmetics Act, 1940, hereinafter referred to as 'the Drug Act', the Government of Punjab has declared all Vaid and Hakims who had been registered under the East Punjab Ayurvedic and Unani Practitioners Act, 1949, the Pepsu Ayurvedic and Unani Practitioners Act, 2008 Bk. and the Punjab Ayurvedic and Unani Practitioners Act, 1963, as persons practising the Modern System of Medicines for the purpose of Drugs and Cosmetics Act, 1940, in the State of Punjab; and that the petitioner having been registered under the Ayurvedic and Unani and Modern System of Medicines and Surgery, was in view of the notification, Annexure P. 2, entitled to practice Modern System of Medicines.

Sarwan Singh Dabri v. State of Punjab and others (D. S. Tewatia, J.)

(3) In the written statement filed on behalf of respondents No. 1, 2 and 4, it has been *inter alia* asserted that the petitioner was not entitled to practice Modern System of Medicines on the strength of his registration certificate issued to him under the Punjab Ayurvedic and Unani Practitioners Act, 1963 (hereinafter to be referred as the 1963 Act). His registration as medical Practitioner under the 1963 Act entitles him only to practice the Indian System of Medicine and not the Modern System of Medicine. He is, therefore, not entitled to keep allopathic drugs or to prescribe such drugs to his patients. He can keep and prescribe only Ayurvedic, Siddha or Unani drugs.

(4) Whether a person possessing such qualification as would entitle him to practice the system of Indian Medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb and to be entitled to be brought on the State register or the Central register of Indian Medicine meant for the registration of such medical practitioners, would be entitled to practice Modern System of medicine, is the question of law of some significance that has been raised in the present writ petition.

(5) The two systems, i.e., System of Modern and Scientific Medicine and the System of Indian Medicine are totally different and independent of each other, and the qualifications requisite for practising the said two systems of medicine, the manner and mode of acquiring them and other related matters have been dealt with by separate legislations. There are Central Acts, such as the Indian Medical Degrees Act, 1916 and the Indian Medical Council Act, 1956 concerning the system of Modern Scientific Medicine and the Indian Medicine Central Council Act, 1970 dealing with the system of Indian medicine. So far as the State of Punjab is concerned, there was the East Punjab Ayurvedic and Unani Practitioners Act, 1949 and the Pepsu Ayurvedic and Unani Practitioners Act, 2008 Bk., both substituted by Punjab Ayurvedic and Unani Practitioners Act, 1963.

(6) Clause (f) of section 2 of the Medical Council Act, 1956 (hereinafter to be referred as the 1956 Act) defines "medicine" as modern scientific medicine in all its branches and includes surgery and obstetrics but does not include veterinary medicine and surgery. Clause (h) defines "recognised medical qualification" as being of any medical qualifications included in the Schedules. Clause (k) defines "State Medical Register" as meaning a register maintained under any law for the time being in force in any State

regulating the registration of practitioners of medicine. Sub-section (1) of section 15 provides that the medical qualifications included in the Schedules shall, subject to the other provisions contained in this Act, be sufficient qualification for enrolment on any State Medical Register. Clause (b) of sub-section (2) of section 15 prohibits all persons other than a medical practitioner enrolled on a State Register from practising medicine in any State. Section 27 of the 1956 Act authorises every person whose name is for the time being borne on the Indian Medical Register to practice as a Medical Practitioner in any part of India.

(7) There are parallel provisions in the Indian Medicine Central Council Act, 1970 (hereinafter to be referred as the 1970 Act). Clause (e) of section 2(1) defines "Indian Medicine" as meaning the system of Indian Medicine commonly known as Ashtang Ayurvedia, Siddha, or Unani Tibb whether supplemented or not by such modern advances as the Central Council may declare by notification from time to time. Clause (h) defines "recognised medical qualification" meaning any of the medical qualifications, including post-graduate medical qualification of Indian Medicine included in the Second, Third or Fourth Schedule. Sub-section (1) of section 17 entitles persons possessing qualifications included in Second, Third and Fourth Schedule to be enrolled on any State Register of Indian Medicine. Clause (b) of sub-section (2) of section 17 prohibits all persons other than a practitioner of Indian Medicine, save as provided in section 28, who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian medicine from practising Indian Medicine in any State.

(8) The Schedules to respective Acts prescribing qualifications of a medical practitioner entitling him to be registered as such do not import qualifications mentioned in the Schedule of either Act, i.e., qualifications mentioned in the Schedule of 1956 Act do not find a mention in the qualifications mentioned in the Schedule of 1970 Act and *vice versa*.

(9) The legal, medical and other professions are covered by Entry 26 of List III—Concurrent List—contained in Schedule VII to the Constitution of India. In view of the provisions of Article 254 of the Constitution of India, the provisions of State law on a subject in the Concurrent List on which Parliament too had enacted a legislation, has to conform to the provisions of law enacted by

Sarwan Singh Dadri *v.* State of Punjab and others (D. S. Tewatia, J.)

the Parliament. The provisions of the Punjab Ayurvedic and Unani Practitioners Act, 1963, therefore, naturally conforms to the provisions of 1970 Act.

(10) Clause (a) of section 2 of 1963 Act defines "Ayurvedic System" as meaning the Ashtang Ayurvedic System and the Siddha, and includes the modernised form thereof. Clause (f) defines "practitioner" as meaning a person who practices the Ayurvedic System or Unani System. Clause (i) defines "registered Practitioner" meaning a practitioner whose name is entered in a Register. Clause (h) defines "register" meaning the register of practitioners maintained under section 14. The register envisaged under section 14 is in two parts. Persons possessing qualifications envisaged in sub-section (1) of section 15 are entitled to have their names entered in Part 1 of the said register. Persons whose names were entered in Part I or Part II of the Register maintained under the East Punjab Ayurvedic and Unani Practitioners Act, 1949 or the Pepsu Ayurvedic and Unani Practitioners Act, 2008 Bk., before the commencement of 1963 Act were also deemed to be registered in Part I of the register envisaged under section 14 by virtue of the provisions of sub-section (2) of section 15. Persons who were not possessing qualifications specified in Schedule I but whose names were entered immediately before the commencement of 1963 Act in the list maintained under section 34 of the East Punjab Ayurvedic and Unani Practitioners Act, 1949 or under section 33 of the Pepsu Ayurvedic and Unani Practitioners Act, 2008 Bk. and who proved to the satisfaction of the Registrar within a period of 18 months from the commencement of 1963 Act that they were in practice as practitioners on the first day of August, 1963, and would be entitled to have their names entered in Part II of the Register in view of provisions of sub-section (3), of section 15 were to be deemed to be registered in Part II of the register referred to under section 14.

(11) It deserves highlighting that the qualifications mentioned in Schedule I to 1963 Act refer to degrees and diplomas in the Ayurvedic or Unani System of Medicine only.

(12) In view of the clear provision in the two Central Acts, namely, section 15, sub-section (2)(b) of 1956 Act and section 17, sub-section (2)(b) of 1970 Act, no person who is not qualified in the system of Modern Medicine and is not registered as such, either in the State Register or the Central Register, is entitled to practice

modern system of medicine. Same is the case regarding right to practice the system of Indian medicine, namely, that no person who is not possessed of requisite qualification envisaged in the 1970 Act or a like legislation by a State Legislature and is registered as such is entitled to practice the system of Indian medicine.

(13) If the matter was to rest here, then it was obvious that the petitioner who is registered under the 1963 Act would not be entitled to practice the Modern System of Medicine, that is, he would not be entitled to prescribe modern scientific medicines, that is, allopathic drugs, to his patients. But the petitioner is staking his claim to practice the system of modern scientific medicine on a notification issued by the Punjab Government. Annexure P.2 in terms of sub-clause (iii) of clause (ee) of Rule 2 of the Drugs and Cosmetics Rules, 1945 framed under the Drugs and Cosmetics Act, 1940. The notification Annexure P.2 is in the following terms :

"In exercise of the powers conferred by sub-clause (iii) of clause (ee) of Rule 2 of the Drugs and Cosmetics Act, 1940 and Rules thereunder 1945, the Governor of Punjab is pleased to further declare all Vaidis/Hakims who had been registered under the East Punjab Ayurvedic and Unani Practitioners Act, 1949, and the Pepsu Ayurvedic and Unani Practitioners Act, 2008 Bk. and the Punjab Ayurvedic and Unani Practitioners Act, 1965, as persons practising the Modern System of Medicines for the purpose of Drugs and Cosmetics Act, 1940 in the Punjab State.

This supersedes the Notification No. 10449-4HRUL-66/20675, dated the 25th October, 1966 and No. 6589-1HR-67/18140, dated 30th June, 1967."

The question that falls for consideration is as to whether provision of sub-clause (iii) of clause (ee) of rule 2 of the Drug Rules envisage the issuance of notification, like Annexure P.2, declaring Vaidis/Hakims registered under the Act mentioned in the notification as persons practising the Modern System of Medicines for the purpose of the Drugs Act in the Punjab State.

(14) Before answering that question, we might inform ourselves as to what it means to practice the Modern System of Medicines, which the petitioner has claimed that he is entitled to in

Sarwan Singh Dadri v. State of Punjab and others (D. S. Tewatia, J.)

view of the said notification Right to practice Modern System of Medicine would envisage the right to diagnose the disease and then attempt a cure, *inter alia*, by administration of drugs and medicines, and to administer an appropriate allopathic drug or medicine, if such a medical practitioner has in his possession; if he does not have, then to prescribe the appropriate medicine to the patient to be purchased from the licensed druggists.

(15) The capacity to diagnose the disease would depend upon the fact as to whether the medical practitioner had the necessary professional skill to do so. Acquisition of professional skill is again a regulated subject and the measure thereof is the possession of a prescribed Diploma or Degree awarded by a recognised medical institution.

(16) What one might enquire in regard to the right of the petitioner to practice Modern System of Medicine in the light of the above is as to whether the petitioner is equipped with such a professional qualification. The answer is, obviously, in the negative, as admittedly, the petitioner does not possess any prescribed Diploma or Degree from a recognised medical institution in Modern System of Medicine. Even a person, who has acquired the prescribed Diploma or Degree from a recognised medical institution would not be entitled to practice Modern System of Medicine, unless he is so registered, for, as already noticed earlier, section 15(2)(b) of the 1956 Act expressly prohibits a person, who is not so registered to practice the Modern System of Medicine. The person, who can be so registered, should have acquired the prescribed qualifications laid down in the said Act. The petitioner, admittedly, does not possess those qualifications and, therefore, obviously cannot be registered as a medical practitioner in the Modern System of Medicine and, consequently, he cannot practice Modern System of Medicine. The concomitant of this disability is that he cannot prescribe allopathic drugs to his patients and if he cannot prescribe such drugs, he cannot even administer such drugs to his patients on the basis of his own prescription from his own possession and, therefore, he cannot stock or store such drugs for the purpose of administering to his patients.

(17) Answer to the question earlier posed has to be given in the context of the legislative history of the Drugs Act and the Rules framed thereunder made, as also the legislative purpose underlying the enactment of the said Act, besides the relevant provisions of the Act and the Rules.

(18) The Drug Act was originally intended to regulate the import, manufacture, distribution or sale of allopathic drugs and medicines only, when it was first brought on the Statute book. Ayurvedic and Unani drugs and medicines were not then brought in for regulation of the kind under the Drugs Act. Ayurvedic drugs and medicines were brought within the purview of the Drugs Act by the legislature by amending the Drugs Act by Act No. 13 of 1964. By section 2 of the amending Act, clause (a) was added to section 3 of the Drugs Act which defined various expressions occurring therein. Clause (a) defined 'Ayurvedic Drugs and Medicines'. The very section of 1964 Act added clause (aa) which defines the 'Board' in relation to Ayurvedic or Unani drugs. By section 25 of the amending Act, section 33-A was added to Chapter IV of the Drugs Act which provided—"Save as otherwise provided in this Act, nothing contained in this Chapter shall apply to Ayurvedic (including Siddha) or Unani drugs". Section 26 of the 1964 Act added a new Chapter IV-A to the Drugs Act, which exclusively related to Ayurvedic (including Siddha) and Unani Drugs. By section 31 of the 1964 Act, the First Schedule was substituted by a new Schedule which enumerated about 83 books dealing with Ayurvedic (including Siddha) system of medicine and 12 books dealing with Unani (Tibb) system of medicine. Homoeopathic drugs and medicines were brought within the purview of the Drugs Act by notification No. F.1-35/64-D, dated 18th August, 1964, by which Parts VII-A, IX and rule 67-A in Part VI-A were added in the Drugs Rules.

(19) Clause (ee) of rule 2 of the Drugs Rules, which defines 'Registered Medical Practitioner' was added for the first time by Government of India notification No. F.1-22/59-D, dated 9th April, 1960. This clause had undergone thereafter only two amendments which were effected by Government of India Standing Order No. 2130, dated 12th August, 1972 (Government of India Notification No. X.11014/12/72-D, dated 5th June, 1972) and it reads :

"(ee) Registered Medical Practitioner means a person—

- (i) holding a qualification granted by an authority specified or notified under section 3 of the Indian Medical Degrees Act, 1916 (7 of 1916), or specified in the Schedules to the Indian Medical Council Act, 1956 (102 of 1956); or

Sarwan Singh Dadri v. State of Punjab and others (D. S. Tewatia, J.)

(ii) registered or eligible for registration in a medical register of State meant for the registration of persons practising the modern scientific system of medicine excluding the Homoeopathic system of medicine; or

(iii) registered in a medical register, other than a register for the registration of Homoeopathic practitioner, of a State, who although not falling within sub-clause (i) or sub-clause (ii) is declared by a general or special order made by the State Government in this behalf as a person practising the modern scientific system of medicine for the purposes of this Act;

OR

* * * * *

By the said 1972 amending notification, the expression 'excluding the Homoeopathic system of medicine' was added at the fag-end of sub-clause (ii) of the said clause and the expression 'other than a register for the registration of Homoeopathic practitioner' was added to sub-clause (iii) after the words 'registered in a medical register' and before the words 'of a State'.

(20) These amendments became necessary in view of the notification of 18th August, 1964 above-mentioned, whereby the Homoeopathic Drugs and Medicines were brought within the purview of the Act and the Rules and the rule-making authority did not wish to include Homoeopathic practitioner within the definition of the expression 'Registered Medical Practitioner', which, obviously, was intended to include only the Registered Medical Practitioner of the modern scientific system of medicine, that is, Allopathy.

(21) As already observed, Ayurvedic (including Siddha) and Unani drugs, as also Homoeopathic drugs, were brought within the fold of the Drugs Act and the Rules framed thereunder in the year 1964. Before that the Drugs Act and the Drugs Rules only dealt with Allopathic drugs and medicines and the Registered Medical Practitioners in the modern scientific system of medicine, that is, Allopathy. The two amendments of this clause (ee) defining the 'Registered Medical Practitioner' had been added to rule 2 of the Drugs Rules, as noticed above. When clause (ee) was added to rule 2, the Drugs Act and the Drugs Rules dealt with Allopathic drugs and medicines and the 'Registered Medical Practitioners'

thereunder and, therefore, when defining the expression "Registered Medical Practitioner" it could not be within their conception to bring vaidy/Hakims—the practitioners of Ayurvedic (Indian) system of medicine and the Homoeopathic practitioners—within the purview of the said expression.

(22) The expression 'Registered Medical Practitioner' appearing in clause (ee) of rule 2 of the Drug Rules, which it sought to define by that clause, envisage Registered Medical Practitioners of modern scientific system of medicine only. That it is so is made evident by all the sub-clauses of the said clause. When the expression 'Registered Medical Practitioner' is read in the context of sub-clause (i) it meant to refer to a person holding a qualification granted by an authority specified or notified under section 3 of the Indian Medical Degrees Act, 1916 (7 of 1916) or specified in the Schedules to the Indian Medical Council Act, 1956 (102 of 1956). Both these Acts prescribe qualifications in the modern scientific system of medicine to the total exclusion of Homoeopathic system of medicine and the Indian system of medicine, that is, Ayurvedic (including Siddha) and Unani system of medicine. Sub-clause (ii) of clause (ee) of rule 2 expressly refer to a person who is registered or eligible to be registered in a State register meant for the registration of a person practising the modern scientific system of medicine (excluding the Homoeopathic system of medicine).

(23) Sub-clause (iii) of clause (ee) or rule 2 of the Drugs Rules, in terms whereof notification, Annexure P.2, had been issued, could not have been intended by the framers of the said Rules to enable the Government to bring within the purview of the expression "Registered Medical Practitioner" the persons holding the qualifications other than those prescribed for the practitioners of the modern scientific system of medicine. In our opinion, the rule-making authority added sub-clause (iii) by way of abundant caution to bring within the fold of the expression 'Registered Medical Practitioner' such practitioners of modern scientific system of medicine, as did not satisfy the requirement of sub-clause (i) and (ii), but were happened to be registered in a State Register or conceivably could be so registered in future.

(24) That the framers of the Drugs Rules did not intend to cover, *inter alia*, practitioners of the Indian system of medicine, that is, Ayurvedic (including Siddha) and Unani system of medicine, within the term 'Registered Medical Practitioner' would become

Sarwan Singh Dadri v. State of Punjab and others (D. S. Tewatia, J.)

clear when examined in the context of the underlying idea which necessitated the attempt to define the expression 'Registered Medical Practitioner' in the Drugs Rules.

(25) Chapter IV-A of the Drugs Act exclusively deals with the Ayurvedic (including Siddha) and Unani drugs, while Chapter IV thereof deals with the rest of the drugs and medicines. Sub-section (c) of section 18 of the Drugs Act (which is in the following terms) prohibits all persons, on their own behalf or on behalf of other persons, to manufacture for sale or for distribution or to sell or stock or exhibit or offer for sale or distribute any drug or cosmetic, except under and in accordance with the conditions of a licence issued for such purpose under Chapter IV of the Drugs Act:

"18. From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—

* * * * *

(c) manufacture for sale, or sell, or stock or exhibit for sale, or distribute any drug or cosmetic, except under, and in accordance with the conditions of a licence issued for such purpose under this Chapter:

* * * * *

The only small exception made by first proviso to sub-rule (c) is regarding the manufacture, subject to prescribed condition of small quantities of any drug for the purpose of examination, test or analysis. The above provision of section 18 of the Drugs Act, *inter-alia*, prohibits stocking, that is, possession and distribution of the notified drugs, without licence, with the result that none without a licence could purchase the drug from the licensed dealer, as immediately after purchase the drug in question would come into possession and without licence such possession would be illegal. Such person may be a patient himself or he may be a 'Registered Medical Practitioner'. Therefore, to mitigate the rigors of the said prohibition, a provision is made by clause (q) of sub-section (2) of section 33 of the Drugs Act enabling the Government while making rules to provide for the exemption conditional or otherwise for all or any of the provisions of Chapter IV and of the Drugs Rules made thereunder of any specified drug or class of drugs or cosmetic or class of cosmetics. Some of the provisions of the

Drugs Rules so framed have sought to mitigate the rigour of the prohibition contained in section 18(c). Rule 123, which is in the following terms, exempts the drugs mentioned in Schedule 'K' from the provisions of Chapter IV of the Drugs Act and the rules made thereunder to the extent and subject to the conditions specified in 'K' Schedule:

"123. The drugs specified in Schedule 'K' shall be exempted from the provisions of Chapter IV of the Act and the Rules made thereunder to the extent and subject to the conditions specified in that Schedule."

Item 5 of Schedule 'K', which is in the following terms, envisages exemption from the provisions of Chapter IV of the Drugs Act supply of drugs by a registered medical practitioner to his own patients or any drug specific in Schedule 'C' supplied by a registered medical practitioner at the request of another such practitioner if it is specially prepared with reference to the condition and for the use of an individual patient within the conditions prescribed by this item:—

"5. Drugs supplied by a registered medical practitioner to his own patient or any drug specific in Schedule C supplied by a registered medical practitioner at the request of another such practitioner if it is specially prepared with reference to the condition and for the use of an individual patient provided the registered medical practitioner is not (a) keeping an open shop or (b) selling across the counter or (c) engaged in the importation, manufacture, distribution or sale of drugs in India to a degree which render him liable to the provisions of Chapter IV of the Act and the Rules thereunder."

Rule 65 of the Drug Rules prescribes conditions of licence, Sub-rules (2) and (3) of rule 65 authorises the licensed dealer/druggist to supply drugs to a person on the basis of prescription of a registered medical practitioner. Sub-rule (9) of rule 65 not only authorises the licensed druggist to sell by retail the drugs mentioned in that sub-rule on and in accordance with the prescription of a registered medical practitioner, but also further authorises him to effect sale or supply the given drugs to a registered medical practitioner without prescription from a registered medical practitioner, that is, a registered medical practitioner can buy from a licensed druggist

Sarwan Singh Dadri v. State of Punjab and others (D. S. Tewatia, J.)

the drugs mentioned in sub-rule (9) of rule 65 without a prescription from a registered medical practitioner.

(26) One of the conditions of licence to sell, stock or exhibit for sale, or distribute by wholesale drugs other than those specified in Schedules C and C(1) as mentioned in Form 20-B, on which the prescribed licence is to be issued, provides that 'no sale of any drug shall be made to a person not holding the requisite licence to sell, stock or exhibit for sale or distribute the drug'. However, clause (b) of the said condition exempts from this condition the sale of any such drug, *inter-alia*, to a registered medical practitioner for the purpose of supply to his patients. Similar conditions exist in Forms 20-BB, 21-B and 21-BB.

(27) It may be highlighted that the aforesaid provision of the rule and the conditions of licence deal with the Allopathic drugs only and the same confer certain privileges upon a registered medical practitioner and, therefore, it became necessary to define the expression 'Registered Medical Practitioner'. Hence, a comprehensive definition of 'Registered Medical Practitioner' was provided in the year 1960 by adding clause (ee) to rule 2 for the first time. Such a definition was not provided in the Act because the term 'Registered Medical Practitioner' did not occur in any of the provisions of the Act.

(28) One may, however, be asked as to whether only the licensed dealers dealing in Allopathic drugs or the registered medical practitioners of the modern system of medicine alone needed to be prescribed by the Rules the kind of privilege referred to earlier and not the Hakims/Vaids, that is, the practitioners of Ayurveda (including Siddha) and Unani system of medicine. The answer to the aforesaid question is that they did not, because the provision relating to the Ayurvedic (including Siddha) and Unani system of medicine in Chapter IV-A of the Drugs Act itself did not impose the kind of total ban, as was imposed by the provisions of section 18(c) of Chapter IV of the Drugs Act, as would be presently shown. The provisions in Chapter IV-A corresponding to the provisions of section 18 of the Drugs Act are sections 33-D and 33-E, which are in the following terms:—

"33-D. From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf

no person shall himself or by any other person on his behalf, manufacture for sale any Ayurvedic (including Siddha) or Unani drug—

* * * *

(c) except under and in accordance with the conditions of a licence issued for such purpose under this Chapter;

* * * *

Provided that nothing in this section shall apply to Vaidyas and Hakims who manufacture such drugs for the use of their own patients:

Provided further that nothing in clauses * * * (c) shall apply to the manufacture, subject to prescribed conditions, of small quantities of any such drug for the purpose of examination, test or analysis.

33-E. From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf, sell, or stock or exhibit for sale, or distribute, any Ayurvedic (including Siddha) or Unani drug other than that manufactured by a manufacturer licensed under this Chapter."

A perusal of the aforesaid provisions would show that section 33-D prohibited, by any person, himself or on behalf of any other person, manufacture for sale any Ayurvedic (including Siddha) or Unani drug, *inter alia*, except under and in accordance with the conditions of a licence issued for such purpose under Chapter IV-A. The first proviso to the said section exempted Vaidyas and Hakims from the rigour of the provisions of section 33-D, if they were to manufacture such drugs for the use of their own patients. Provisions of section 33-E prohibited any person to sell, stock, or exhibit for sale, or distribute any Ayurvedic (including Siddha) or Unani drugs other than that manufactured by a manufacturer licensed under this Chapter, that is, this section imposed no restriction on any person to sell or stock or exhibit for sale or distribute any Ayurvedic (including Siddha) or Unani drug manufactured by a manufacturer licensed under this Chapter. That means, a licensed dealer/druggist can sell to anybody an Ayurvedic drug manufactured

Sarwan Singh Dadri v. State of Punjab and others (D. S. Tewatia, J.)

under a licence and anybody can purchase such a drug from any licensed dealer/druggist and keep with him without any licence. That further means that the Vaidyas/Hakims, the practitioners of Indian system of medicine, suffer no handicap as a result of section 33-E, unlike the practitioners of the modern scientific system of medicine, as a result of the provisions of section 18(c). The Vaidys/Hakims and their patients can buy any Ayurvedic drug or medicine, which has been manufactured under a licence and after purchase, they can keep such a medicine/drug. The Vaidys/Hakims can also distribute such medicines without any licence.

(29) The Vaidys/Hakims also suffer no handicap as a result of the provisions of section 33-D, because it expressly provides that the Vaidys/Hakims can manufacture any Ayurvedic (including Siddha) or Unani drug for the use of their own patients.

(30) Since the practitioners of the Indian system of medicine, that is, Ayurveda (including Siddha) or Unani, as a result of the prohibitory provisions of Chapter IV-A of the Drugs Act, suffer no handicap, therefore, the provisions of section 33-N, which authorises the Central Government to make rules did not envisage providing for any exemption from the provisions of Chapter IV-A, as had been done by clause (g) of sub-section (2) of section 33 of Chapter IV of the Drugs Act. Since the statute does not authorise the Government, while framing the rules, to provide for exemption from the application of the provisions of Chapter IV-A, therefore, in the Drugs Rules the expression 'Hakim' or 'Vaid' or the expression 'prescription' by Hakims or Vaidys or the practitioners of the Indian System of Medicine does not occur anywhere.

(31) Viewed from any angle, the framers of the Drugs Rules did not intend to bring 'Hakims' or 'Vaidys', the practitioners of the Indian System of Medicine registered as such under the Act mentioned in notification, annexure P-32, within the purview of the expression 'Registered Medical Practitioner', because if such registered medical practitioners of the Indian System of Medicine are held to fall within the category of Registered Medical Practitioner of Modern Scientific System of Medicine by virtue of the notification, annexure P. 2, issued in terms of sub-clause (iii) of clause (ee) of rule 2 of the Drug Rules, then the licensed druggists cannot refuse to dispense allopathic drugs and medicines on the prescription issued by such Registered Medical Practitioner of the Indian

System of Medicine and further such a practitioner can buy allopathic drugs without a prescription from a licensed druggist. The rule-making authority, in our view, could not have intended by adding sub-clause (iii) of clause (ee) of rule 2 of the Drugs Rules that the Registered Medical Practitioners of the Indian System of Medicine should be included in the category of the Registered Medical Practitioners of Modern Scientific System of Medicine entailing the aforementioned consequences, besides setting at naught the provisions of the Indian Medical Council Act of 1956, which prohibits persons other than those who were registered under that Act from practising the Modern System of Medicine. We are, therefore, clearly of the opinion that the notification, annexure P. 2, issued by the State Government is *ultra vires* the provisions of sub-clause (iii) of clause (ee) of rule 2 of the Drugs Rules and is, therefore, illegal and we, therefore, quash the same as no such notification could legally be issued by the State Government. The petitioner, on the strength of that notification, therefore, cannot be treated in law as Registered Medical Practitioner of Modern Scientific System of Medicine. Hence, he is not entitled to practice Modern Scientific System of Medicine and the impugned action is clearly justified.

(32) The petitioner referred to us Single Bench decision rendered in Civil Writ Petition No. 6308 of 1975 decided on 10th November, 1982. This judgment, in our view can be of no help to the petitioner. The facts of that case were that drug licence of the petitioner therein was suspended for having violated the provisions of rule 65(9) of the Drugs Rules by selling drugs on a given date for a given amount to Shri Deep Chand, son of Shri Prem Chand Gupta of Bahadurgarh. In the petition, it was alleged that Deep Chand Gupta was duly registered in Haryana State as a Medical Practitioner. The only contention raised on behalf of the State was that the petitioner could supply medicines to a Registered Medical Practitioner who was registered in Punjab State. There, it was nobody's case that Deep Chand Gupta was a Registered Medical Practitioner in the Indian System of Medicine and, therefore, the petitioner was not entitled to sell medicines to him. The only narrow question that came up for consideration before the Court in that petition was whether sub-clause (ii) of clause (ee) of rule 2, read with rule 65(9), prohibited sale of the given medicines to a Registered Medical Practitioner who is registered in a State other than Punjab? This Court held that it was not necessary that the buyer Registered Medical Practitioner should have been registered

Sarwan Singh Dadri v. State of Punjab and others (D. S. Tewatia, J.)

in the State of Punjab to be entitled to buy drugs in question from a licensed druggist of Punjab. The case proceeded on the assumption that if Deep Chand Gupta had been registered in Punjab, then the licensed druggist could have sold the drugs in question to him in view of the provisions or sub-rule (9) of rule 65.

(33) The petitioner, however, placed strong reliance on the Single Bench decision of this Court rendered in *Phool Singh v. State of Haryana* (1). The facts of that case were that the petitioner therein had stocked 23 kinds of allopathic drugs for administration to his patients. He was convicted under section 27(a)(ii) to rigorous imprisonment for three months and for a further rigorous imprisonment of six months under section 28 of the Drugs Act. The case pleaded by him was that he held a certificate of registration from the State Ayurvedic and Unani Medical Council, Bihar, and was duly registered as such in Bihar; and that by virtue of Schedule 1 to the Punjab Ayurvedic and Unani Practitioners Act, 1963, everybody, who was holding a degree or diploma of any Ayurvedic or Unani College recognised by the faculty within Punjab or outside would be eligible for being registered as a medical practitioner in the States of Punjab and Haryana. In view of the above stand of the accused-petitioner, the learned Judge held that he came within the definition of 'Registered Medical Practitioner' and as such he was entitled to keep medicines and could not be held liable for violation of section 18(c) of the Drugs Act and accordingly quashed his conviction and sentence. With respect, we do not subscribe to the view of the learned Single Judge. On the strength of registration under the 1963 Act, a medical practitioner of the Indian System of Medicine is not entitled to keep allopathic drugs in his possession and administer them to his patients. In the case before the learned Single Judge, the accused had not taken shelter even behind any notification of the State Government, like annexure P. 2 in the case before us, and therefore, the accused in that case did not have even a semblance of case that could warrant his acquittal. We, therefore, overrule the ratio in *Phool Singh's case* (supra), to the extent indicated above.

(34) For the reasons aforementioned, we find no merit in this petition and dismiss the same *in limine* with no order as to costs.

D. V. Sehgal, J.—I agree.

R.N.R.

(1) Criminal Revision No. 1617 of 1984 decided on 20th September, 1985.