

Court No. - 1

Case :- P.I.L. CIVIL No. - 14884 of 2021

Petitioner :- Ajay Kumar Shamra

Respondent :- U.O.I.,Min.Of Education,Deptt.Of Higher Edu. Thru.Secy. &Ors

Counsel for Petitioner :- Rajesh Chadha,Prashant Agarwal

Counsel for Respondent :- C.S.C.,A.S.G.,Gyanendra Kumar Srivastav

Hon'ble Ritu Raj Awasthi,J.

Hon'ble Dinesh Kumar Singh,J.

1. The present petition under Article 226 of the Constitution of India has been filed captioned as 'Public Interest Litigation' by petitioner-Mr. Ajay Kumar Sharma, holding Bachelor Degree of Science (B.Sc.) and Bachelor Degree of Education (B.Ed). He claims to be a publisher having ties with various educational institutions. He also claims to have keen interest in the field of education. It has been further stated that the petitioner has no personal interest in the matter, but the cause espoused by him in this petition has great mortification to the public at large.

2. In the petition, following prayers have been made:-

"a. Issue a writ of Mandamus or any other appropriate writ, order or direction to the Government of India along with the Government of Uttar Pradesh for the shutting down of Uttar Pradesh State Medical Faculty.

b. Issue directions to the Government of India and the Government of Uttar Pradesh for taking disciplinary steps against the Uttar Pradesh State Medical Faculty for carrying on its activities after 09.05.2016 i.e. after the date on which the Repealing and Amending Act, 2016 came into force, repealing the Indian Medical Degrees Act, 1916 in its entirety.

c. Issue any other circumstances of the present petition."

3. It is stated in the petition that Uttar Pradesh State Medical Faculty was created under the Indian Medical Degrees Act, 1916 (hereinafter referred to as 'The Act, 1916"). The Government of India vide Notification No.1754, Department of Education Health and Lands, Delhi in exercise of powers conferred under Section 3 of The Act, 1916 authorized the United Provinces State Medical Faculty to confer, grant or issue degrees, diplomas, licences, certificates and other documents, stating or implying the holder grantee or recipient thereof to practice Western Medical Science with effect from 15th November, 1926. This United Provinces State Medical Faculty currently known as 'Uttar Pradesh State Medical

Faculty' which came into existence by virtue of the aforesaid Notification dated 16th December, 1916 issued by the Government of India, under Section 3 of The Act, 1916. It is further stated that on 9th May, 2016, the Repealing and Amending Act, 2016 (hereinafter referred to as " The Act, 2016") came into force. The statute mentioned in 1st-Schedule, which had become otiose in course of time have been repealed by The Act, 2016. The Act, 1916 is also one of the Acts which have been specifically repealed by the Act, 2016. It is submitted that once The Act, 1916 has been repealed on 9th May, 2016 by The Act, 2016, the powers, authorization and functions of the various authorities created by Section 3 of The Act, 1916 also ceased to exist and, therefore, privileges given to the respondent no. 3 i.e. Uttar Pradesh State Medical Faculty to confer, grant or issue degrees, diplomas, licences, certificates or any other such documents also ceased to exist. It is further submitted that since the respondent no. 3 was created vide Notification dated 16th December, 1926 in exercise of powers conferred under Section 3 of The Act, 1916 by repealing the said Act, the said authority is ceased to exist. Accordingly, with effect from 09.05.2016 the respondent no. 3 has no power or authority to confer, grant or issue degrees, diplomas, licences, certificates or other documents in the field of medical/paramedical education.

4. It is further submitted that despite the Repealing Act came into force with effect from 09.05.2016, the respondent no. 3 is continuing to confer degrees, diplomas, licences, certificates in a most illegal manner, and therefore, it is imperative to issue a writ of Mandamus/any other appropriate writ, order or direction to the Government of India and Government of Uttar Pradesh to close the Uttar Pradesh State Medical Faculty and directions should be issued for disciplinary actions against the Uttar Pradesh State Medical Faculty for carrying out the activities after 09.05.2016.

5. Heard Mr. Rajesh Chadha and Mr. Manish Raghav, Advocates for the petitioner, as well as Mr. J.N. Mathur, learned Senior Advocate assisted by Mr. Gyanendra Kumar Srivastava, for respondents.

6. Mr. J.N. Mathur, learned counsel for respondents, has submitted that the United Provinces State Medical Faculty now known as 'Uttar Pradesh State Medical Faculty-respondent no. 3 was not created under Section 3 of The

Act, 1916. The respondent no. 3 was constituted vide Resolution No.1228-

B-202, Medical Department, Dated 10th November, 1926 (Annexure-1 to the counter affidavit) for conducting the examination for licentiates in public health and the nurses examination with effect from 15th November, 1926.

7. In exercise of powers conferred under Section 3 of The Act, 1916, the Governor General in Council authorized the United Provinces State Medical Faculty vide Notification dated 15th November, 1926 issued by the Department of Education Health and Lands, Delhi to confer, grant or issue in British India, diplomas, licences, certificates, or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practice Western Medical Science. In Schedule of Section-3 of The Act, 1916, the name of the United Provinces State Medical Faculty was included vide Notification dated 16th December, 1926.

8. The learned counsel for the respondents, therefore, submits that the writ petition has been filed on assumption that the respondent no. 3 was created under The Act, 1916 is wholly incorrect. The respondent no. 3 was only recognized as one of the institutions under The Act, 1916 to confer, grant or issue diplomas, licences, certificates, or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practice Western Medical Science. It is further submitted that by repealing of The Act, 1916, the existence of respondent no. 3 does not cease to exist as it was not created under the provisions of The Act, 1916, as submitted by the learned counsel for the petitioner. It is further submitted that after The Indian Medical Council Act, 1956 (hereinafter referred to as "The Act, 1956") came into force, degrees in modern medicine are granted and recognized by the Medical Council of India under Section 10-A and Section 11 of The Act, 1956. Now the said Act has been repealed and the National Medical Commission Act, 2019 has come into force and, now similar power is vested under Section 26 of The Act, 2019. Even before The Act, 1956 came into existence, there was Indian Medical Council Act, 1933 (hereinafter referred to as "The Act, 1933") in force and, it was the MCI, which was authorized to maintain a Register of the qualified persons for practice in medicine which includes modern scientific medicine in its all branches and include surgery and obstetrics. After enforcement of provisions of The Act, 1933, The Act, 1956 and The Act, 2019, the

respondent no. 3 had no role in recognizing, conferring or issuing licences for practice in medicine and other branches of Modern Medical Science.

9. It is further submitted that there are number of paramedical, nursing and allied health courses which are not run only in the medical colleges, but training and certificates/diplomas are provided by other institutions as well. The State Medical Faculty grants recognition to such diplomas and certificate etc by virtue of their registration in U.P. State Medical Faculty. These persons become eligible to apply for appointment under the relevant Service Rules framed by the State Government. It is further submitted that under The Indian Council Nursing Act, 1947 (hereinafter referred to as "The Act, 1947") State Medical Faculty is the authority to regulate the registration of nurses, midwives and health visitors and maintain the Register of nurses, midwives or health-visitors. These courses for nursing, x-ray technician, pharmacy, physiotherapy etc. are not within the aegis of The Act, 2019 and their examinations etc are held separately. The U.P. State Medical Faculty is empowered by the State Government to conduct the examination of the trainees of laboratory technician pharmacist, x-ray technician, diploma in optometry, diploma in physiotherapy etc. who undertake training in various medical colleges of the State and other institutions duly recognized by the Medical Education Department of the State. In the Government Order dated 14th October, 2005 (Annexure CA-8 to the counter affidavit) it has been provided that where the councils are created under any enactment, they will perform all functions as contemplated in that enactment, but where there is no council, all the functions, regulating the paramedical courses, will be performed by the U.P. State Medical Faculty. The State Government issued Order dated 31st May, 2001 to all the Universities of the State of U.P., directing them that before recommendation or affiliation for paramedical courses to institutions, no objection certificate from Medical Education Department and permission from the concerned councils shall be taken (Annexure CA-9 to the counter affidavit).

10. Lastly, it is submitted that in view of Section 6 of the General Clauses Act, 1897, The Repealing Act would not affect the previous operation of any enactment so repealed or anything duly done or suffered there-under unless a different intention appears in the Repealing Act. It is, therefore, submitted that by virtue of The Act, 2016, existence of the U.P. State Medical Faculty does not cease to exist which performs the various

functions as earlier under The Act, 1947 and, all the government orders issued from time to time. It is, therefore, submitted that the writ petition is misconceived and, is liable to be dismissed.

11. We have considered the submissions advanced by the learned counsel for the parties.

12. This writ petition has been filed primarily for issuance of a writ of Mandamus, directing the State Government to close down the U.P. State Medical Faculty-respondent no. 3 as The Act, 1916 has been specifically repealed in 2016 under which allegedly the respondent no. 3 was constituted. From the fact, as mentioned above, it is evident that the respondent no. 3 was not constituted under The Act, 1916 but it was constituted vide Notification dated 15th November, 1926 and vide Notification dated 16th December, 1926 issued under Section 3 of The Act, 1916, it was authorized to confer, grant or issue diplomas, licences, certificates or other documents for practice Western Medical Science. By repealing The Act, 1916, the existence of respondent no. 3 does not cease to exist. After The Act, 1933, the respondent no. 3 was not recognizing or granting degrees as this power was specifically vested in the Medical Council of India. The respondent no. 3 has been authorized under The Act, 1947 and by several Government Orders to regulate the registration of nurses, midwives health visitors and other paramedical staff etc.

13. In view of the above, we do not find any contravention of law by respondent no. 3 in regulating and recognizing nursing staff and other paramedical staff in the State. Thus the present writ petition, which is totally misconceived, is **dismissed**. Interim order, if any, stands **vacated**.

[D.K. Singh, J.] [R.R. Awasthi, J.]

Order Date :- 11.8.2021

MVS/-