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## Uma Kant Tiwari and Others Vs State of U.P. and Others

None

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**Court:** Allahabad High Court

**Date of Decision:** Oct. 23, 2009

**Acts Referred:**

Constitution of India, 1950 " Article 14

**Citation:** (2010) 1 AWC 718

**Hon'ble Judges:** Ashok Bhushan, J; Arun Tandon, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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## Judgement

Arun Tandon, J.

The present writ petition was decided under judgment and order of a Division Bench of this Court dated 21.5.2003,

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.

2. The Division Bench judgment and order of this Court dated 21.5.2003 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 25.5.2007, set aside the Division Bench judgment 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.

3. On remand the Division Bench of this Court issued fresh notices to respondent Nos. 3, 4, 5 and 7 vide order dated 14.9.2007. 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).

4. 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 21.2.2008 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.

5. On behalf of Hindi Sahitya Sammelan, Allahabad, i.e., respondent No. 6, Sri Jeevan Prakash Sharma, advocate subsequently appeared and

filed counter-affidavit. 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 14.10.2008. Accordingly notices

by registered post were issued by the Registry of this Court on 18.10.2008. Service upon respondent No. 7 was deemed sufficient under order of

this Court dated 28.8.2009.

6. The present writ petition alongwith 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.

7. 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 degrees of Ayurved Ratna and Vaidya 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 and 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 Paddhati Evam Prakritik

Chikitsa Board, Bhopal. Petitioners claim to be practising medicine in different 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) u/s 50 of Act, 1939, but such registration has been refused. Hence, the petition.

8. By means of the present writ petition, petitioners initially prayed for a writ of mandamus declaring the words ""upto 1967"" in IVth 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 ultra vires 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 ultra vires 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 1.9.2008, 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 Sections 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.

9. 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

Indian 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 advice 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 Sections 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 judgment of the Hon<sup>ble</sup> Supreme

Court of India in the case of Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati

Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, 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.

10. 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 Indian 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 B.A.M.S., Unani (Kamil-e-

Jarahat) B.U.M.S. and Siddha (Siddha Maruthyam Arignar) B.A.M.S. Recognised medical qualification as per Section 2(1)(h) of Act, 1970 have

been provided. After 1.10.1976 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 degrees 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 judgment of

Hon"ble Supreme Court of India in the case of Delhi Pradesh Registered Medical Practitioners Vs. Delhi Admn. Director of Health Services and

Others, 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 and others Vs. State of U.P. and others, for the same purpose.

11. 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.

12. 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 15.8.1971, 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 21.2.2008, 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.

13. He explains that in view of the law declared by the Hon<sup>ble</sup> Supreme Court of India in the case of Pramod Kumar Vs. U.P. Secondary

Education Services Commission and Others, 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.

14. Lastly it is pointed out that in the counter-affidavit filed on behalf of Hindi Sahitya Sammelan by Radhe Shyam Pandey sworn on 11.3.2008, it

has been stated that judgment and order of this Court dated 4.12.1996 passed in Civil Misc. Writ Petition No. 9802 of 1982 has been challenged

by way of SLP No. 6344 of 1997 and the said SLP is pending before the Hon<sup>ble</sup> 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 SLP No. 6344 of 1997 had been decided under

order dated 23.11.1998 and therefore, the counter-affidavit filed on behalf of Hindi Sahitya Sammelan contains deliberate incorrect statement of

facts.

15. 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 in fact only conducts written examination for the purposes of awarding the said degrees. Any person, who is successful in the written

examination so held by the Hindi Sahitya Sammelan is awarded the ""degree, irrespective of the fact as to whether he was enrolled as a regular

student in any institution or not.

16. 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.

17. In Part XI of the Constitution of India, under Articles 245 and 255 legislative powers have been conferred upon the Parliament as well as upon

the State 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.

18. 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 Coordination 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 India.

(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) [\*\*\*]

19. 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.

20. 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 being 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 Indian Medicine.

(2) Save as provided in Section 28, no person other than a practitioner of Indian medicine who possess a recognised medical qualification and is

enrolled on a State Register or the Central Register of Indian Medicine.--

....

(b) shall practise Indian medicine in any State:

....

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

(a) the right of a practitioner of Indian medicine enrolled on a State Register of Indian 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.

21. 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.

22. 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 Universities, Boards or Other Medical Institutions in India

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Name of University, Recognised Medical Abbreviation for Remarks

Board or Medical Qualifications Registration

Institution

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1 2 3 4

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....

Uttar Pradesh

99....

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105 Hindi Sahitya Vaidya Visharad .... From 1931

Sammelan, Prayag .... to 1967

Ayurved-Ratna From 1931

to 1967  
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23. 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.

24. It will be seen that u/s 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.

25. 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 u/s 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.

26. 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.

27. 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.

28. With regard to challenge to the words ""upto 1967"", the only ground raised for contending that the cut off date is arbitrary and violative of

Article 14 of the Constitution of India, is that no reasons have been disclosed. In support thereof, it is stated that the course/curriculum which was

there prior to 1967 continues even thereafter for the purposes of examinations held by the Hindi Sahitya Sammelan and, no change has been

introduced in the course after 1967.

29. 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 u/s 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.

30. 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.

31. 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 judgments of the Hon<sup>ble</sup> Supreme Court of India in the cases of Bharat Hydro Power

Corporation Ltd. and Ors. v. State of Assam and Ors. AIR 2004 SC 3173 and State of Maharashtra v. Bharat Shanti Lal Shah and Ors. (2008)

13 SCC 5.

32. The Hon<sup>ble</sup> Supreme Court of India in the case of N. Kannadasan v. Ajay Khose and Ors. (2009) 7 SCC 1 and M. Rathinaswami and

Others etc. Vs. State of Tamil Nadu and Others etc., 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.

33. 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 in fact 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 u/s 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.

34. 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.

35. Hindi Sahitya Sammelan has fairly stated that it does not affiliate or recognise any institution and it exercises absolutely no control on the

teaching in the subject of medicine qua degrees of Vaidya Visharad and Ayurved Ratna, 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.

36. 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.

37. At this stage, this Court may refer various judgments 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. Delhi Admn. Director of Health Services and

Others, 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 v. Union of India and Ors.

and Dr. Jal Singh v. Union of India and Ors. 2004 (2) ESC 984 (All) a Division Bench of the 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 and Another Vs. A.P. Verma, Chief Secretary, Government of U.P. and Others, and in the case of Charan

Singh and Others etc. Vs. State of U.P. and Others, , 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 v. State of U.P. and Ors..

38. This Court may also refer to the judgment of the Hon"ble Supreme Court of India in the case of Promod 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.

39. 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

afterthought 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.

40. So far as challenge to Sections 27(1), 28, 50 and 52 of Act, 1939 and Schedule being ultra vires 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 u/s 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 u/s 28 of Act, 1939. The Schedule to Act,

1939 is more or less same as that provided under Act, 1970. The Schedule in fact 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 u/s 28 of Act, 1939, which is pari materia 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.

41. 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 conflict as suggested by the learned

Counsel for the petitioners before. The plea of repugnancy would only arise, if there is a conflict, between the State Act and Central Act, which

cannot be reconciled. The Division Bench of this Court in the case of Hakim Musharraf Ali Usmani v. State of U.P. and Anr. 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.

42. In view of the aforesaid, the plea raised on behalf of the petitioner as well as on behalf of the 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.

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