

- 4 . MINISTRY OF HEALTH & FAMILY WELFARE
BY ITS SECRETARY,
GOVT. OF INDIA, NEW DELHI
- 5 . Dr. S.A.HABEEB
S/O LATE SYED AZIZ
AGED ABOUT 73 YEARS
R/O BANGALORE-560001 ...RESPONDENTS

(BY SMT.MANASI KUMAR, ADV. FOR
SMT.NIDHI HANJI, ADV. FOR R-1;
SMT.SUMANA BALIGA, ADV. FOR R-2;
SRI T.P.SRINIVASA, PRL. GOVT. ADV. FOR R-3;
SRI K.RAM BHAT, CGC FOR R-4.)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO WRIT APPEAL BY SETTING ASIDE THE IMPUGNED ORDER OF THE LEARNED SINGLE JUDGE DATED 17.12.2020 PASSED IN W.P.Nos.50673/2013, 52909-52936/2013, BY ALLOWING THE WRIT PETITION FILED BY THE PETITIONERS.

THESE APPEALS HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **S. SUJATHA, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

Since common and akin issues are involved, the matters are heard together and disposed of by this common judgment.

2. The appellants/petitioners claiming to be the registered Ayurvedic Medicinal Practitioners and registered in the Karnataka State with the respondent No.2 – the Karnataka Ayurvedic and Unani Practitioners

Board ('the Board' for short) to practice their Ayurvedic medicines based on the certificates issued by the Registrar of the Board, had approached the writ Court challenging the notification dated 25.06.2010 issued by the Central Government exercising the powers under Section 14[2] of the Indian Medicine Central Council Act, 1970 ['IMCC Act' for short] so far as it relates to Entry-2 inter alia challenging the action of the Board in canceling the registration certificates of practice of the appellants vide order dated 18.09.2013 regarding the course of Vaidyavidwan. The writ petitions having been dismissed by the learned Single Judge vide common order dated 17.12.2020, these appeals are preferred by the appellants/petitioners.

3. Succinctly stated the facts are as under;

All the petitioners are holders of Vaidyavidwan Certificate issued by Andhra Ayurvedic Parishad, Vijayawada ('Parishad' for short) during 1976 to 1979. The appellants are registered medical practitioners in

Ayurvedic System of Medicine [Vaidyavidwan] in Karnataka having registered in Karnataka Ayurvedic Unani Practitioners Board [‘Board’ for short]. The Government of India has constituted a council for Central Council of Indian Medicine [‘CCIM’ for short]. Indian Medicine Central Council Act, 1970 [‘IMCC Act’ for short] was enacted with an object to provide for the Constitution of a Central Council of Indian Medicine and the maintenance of a Central Register of Indian Medicine and for matters connected therewith. The Parishad was conducting examination and issuing certificates in respect of the course Vaidyavidwan as a recognized medical qualification defined in Section 2(1)(h) of the IMCC Act. It transpires that the Board has issued a notification dated 28.02.2008 canceling the registration of number of Doctors including the appellants herein, who were practicing as “Vaidyavidwan Certificate” holders, on the premise that

the said certificates said to have been issued by the Parishad was fake/fabricated.

4. Some of the petitioners and others had filed W.P.No.4090/2008 and allied matters before this Court which came to be disposed of, on 8.12.2008 directing the Registrar of the Board to hold an enquiry after giving an opportunity to the respective petitioners therein, and to pass appropriate orders in accordance with law. The Board has referred the matter to the COD in respect of the cancellation of registration of the appellants/petitioners. W.P.Nos.31670-72/2010 were filed by some of the Vaidyavidwan Certificate holders questioning the validity of the FIR and succeeded in terms of the order dated 4.10.2010. The FIR filed against the petitioners therein, were set aside. The Board has constituted a Sub-Committee consisting of six members to examine the veracity of the certificates/qualification of the Doctors. The Sub-committee has submitted its interim report on

11.09.2013 recommending among others that [1] Registration of 18 practitioners with Vaidhya Vidhwan Certificates issued to up to 31.12.1975 may be continued, subject to further investigation; and [2] Registration of 99 practitioners with Vaidhya Vidhwan certificates issued after 31.12.1975 may be cancelled.

5. The Board has initiated proceedings pursuant to the notification dated 25.6.2010 issued by the Ministry of Health and Family Welfare, Government of India, New Delhi, wherein the Central Government in consultation with CCIM (Central Council of Indian Medicine) has amended II Schedule to the Act of 1970 in exercise of the powers conferred under sub-section (2) of Section 14 of the Act of 1970, inserting the validity period from 1923 to 1975 in column No.4 and acting on the recommendation of the six members committee, to cancel the registration of the appellants. The Board has cancelled the registration of practice by the petitioners

vide official memorandum dated 18.09.2013 individually informing them about the availability of appeal remedy under Sub-section [4] of Section 17 of the Karnataka State Ayurvedic Naturopathy, Siddha, Unani and Yoga Practitioners' Miscellaneous Provisions Act, 1961. As regards the challenge made to the notification dated 25.6.2010, the learned Single Judge placing reliance on the decisions of the Hon'ble High Court of Delhi in the case of ***Ashfaque Ansari v. Union of India and ors., reported in (2016) SCC Online Del. 81 and Rajasthan Pradesh V.S. Sardarshahar and Anr., v. Union of India and others, (2010) 12 SCC 609,*** upheld the notification. As regards the challenge to the order dated 18.09.2013, granted liberty to the petitioners to challenge impugned order passed by the Board dated 18.9.2013 before the appellate authority as provided under Section 17(4) of the Act. Being aggrieved, the appellants/petitioners have preferred these writ appeals.

6. Learned counsel for the appellants Sri Balasubramanya B.N in WA.Nos.148/2021, 159/2021 and 163/2021 argued that the recognition of a “recognized medical qualification” as defined under Section 2(h) and “recognized” under Section 14(1) of the IMCC Act, namely Vaidyavidwan awarded by the Parishad has been restricted to the validity period i.e., from 1923 to 1975 in terms of the impugned amendment dated 25.6.2010. The said amendment intends to de-recognize all the Vaidyavidwan certificates awarded by the Parishad from 1975 till 2010 as invalid. Resultantly, the registration and enrolment of the appellants as practitioners of Indian Medicine is sought to be cancelled.

7. Learned counsel submitted that the amendment purported to be made in exercise of the powers under Section 14(2) of the IMCC Act is an administrative act, not a legislative act. Hence, the

considerations for challenge of the legislative amendment, such as existence of legislative competence or presumption of constitutionality etc., do not apply. The executive has no power to amend the schedule when the legislature did not intend to specify a “validity period” for the recognition of the medical qualification. The executive bringing the amendment to the heading of the column by substituting the words “validity period” in place of the words “remarks” is without authority of law.

8. Learned Counsel further submitted that, in terms of Section 14(2) of the IMCC Act the power is given to the Central Government to amend only to add to the list of recognized medical qualification in the II Schedule and to specify any particular validity period when granted after a specified date. Section 21(4) of the IMCC Act was referred, to contend that the said provision ought to have been invoked for withdrawal of the recognition. In the absence of any factual basis on the strength of which the respondents have taken the decision to restrict the

validity period of Vaidyavidwan qualification between 1923 to 1975, the same is without authority of law and suffers from non-application of mind.

9. Learned counsel further argued that the impugned notification violates the fundamental rights of the appellants. Placing reliance on ***Bihar State Council of Ayurvedic and Unani Medicine v. State of Bihar, reported in (2007) 12 SCC 728***, the learned counsel submitted that when a degree stands legally conferred on the appellants/practitioners, the same shall be treated as a recognized degree. Distinguishing the judgments of ***Ashfaqe Ansar and Rajasthan Pradesh V.S Saradarshahar, supra***, learned counsel submitted that ***Bihar State Council of Ayurvedic and Unani Medicine*** is applicable to the facts and circumstances of the case. Thus, the learned counsel submitted that the learned Single Judge has failed to appreciate these vital aspects in a right perspective while dismissing the writ petitions.

10. Learned counsel Sri J.M.Naidu along with Sri Sudhakar M appearing for the appellants in WA.No.149/2021 supporting the arguments of the learned counsel appearing for the appellants in WA.No.148/2021 and allied matters submitted that the action of the Board in de-recognizing the medical qualification is wholly perverse and is repugnant to the provisions of the Act, 1951.

11. Learned Counsel Smt Manasi Kumar appearing for the CCIM justifying the impugned notification dated 25.6.2010 and the orders impugned submitted that the Central Government had competency for invoking Section 14(2) of the Act of 1970 to specify the validity period. It was argued with vehemence that for the reasons best known to the appellants the Parishad is not arrayed as a party to the proceedings which indeed is a necessary and proper party to put forth its stance in the matter. The interim report dated

11.9.2013 would demonstrate that no admission was provided to the courses by the Parishad post 1.2.1976. In view of the Act of 1970, amended on 21.12.1970 by Act No.48/1970, the only recognized course was BAMS. Disputing the genuineness of the certificates said to have been issued by the Parishad in respect of Vaidyavidwan examination, learned counsel submitted that the appellants cannot find fault with the notification Annexure-F or Interim report at Annexure-E.

12. Learned counsel further submitted that the II Schedule to the IMCC Act recognized some of the old medical qualifications awarded in different States of India under different enactments with a view to protect practitioners in different States who obtained the degree/certificate prior to implementation of the IMCC Act. In order to ensure that the old courses are not continued by the institutions which would defeat the object and purpose of the IMCC Act, 1970, it was deemed necessary

to give a validity period. In this regard, correspondence was made with the respective universities/institutions to collect relevant data. However, Parishad has not responded to the clarifications/queries made by the CCIM. The said notification included several other amendments to Schedule II.

13. IMCC Act of 1970 being a special enactment, enacted by the Parliament, prevails over the State enactment. Much emphasis was placed on the judgment of the Hon'ble Delhi High Court in the case of **Ashfaque Ansari, supra**, to contend that the validity of the notification dated 25.6.2010 impugned herein having been upheld as valid, similar view is warranted in the present set of facts. The appellants without exhausting the alternative and efficacious remedy of appeal available under the Act cannot rush to this Court invoking the writ jurisdiction. Thus, the learned counsel justifying the impugned notification dated 25.6.2010

submitted that the ground of challenge is vague. Mere hardship or inconvenience caused to the appellants would not be a ground for challenging the validity of the notification issued by the competent authority exercising the statutory power conferred under the Act. The appellants are denuded to practice as the certificates said to have been issued by the Parishad from 1976 appears to be fake, which has been analyzed by the Board.

14. Learned counsel Smt Sumana Baliga appearing for the Board inviting the attention of the Court to **Ashfaque Ansari**, *supra* and justifying the action of the proceedings initiated for de-recognition of the certificate of recognition of the appellants sought for dismissal of the appeals. Learned Counsel further argued that no writ petition is maintainable since the appellants have not availed the statutory remedy of appeal under Section 17(4) of the Act of 1961; having regard to these aspects, the learned Single Judge

upholding the notification dated 25.06.2010 has rightly relegated the appellants to the appellate authority insofar as the challenge to the order dated 18.09.2013 is concerned. The same deserves to be confirmed dismissing the writ appeals.

15. Learned counsel appearing for the Union of India adopting the arguments advanced by the learned counsel appearing for the CCIM submitted that, the impugned notification dated 25.06.2010 has been issued by the Central Government exercising the powers under Section 14[2] of the IMCC Act, inserting the validity period from 1923 to 1975 to 'Vaidyavidwan' conducted by Andhra Pradesh Parishad, Vijayawada [Examining Body], in the II Schedule. The learned Single Judge having appreciated the competency of the Central Government in the backdrop of the judgment of the Hon'ble Delhi High Court in **Ashfaque Ansari** supra, has rightly upheld the said notification and the same deserves to be confirmed by this Court.

16. We have carefully considered the rival submissions of the learned counsel appearing for the parties and perused the material on record.

17. The IMCC Act has been enacted by the Parliament to provide for the Constitution of a Central Council of Indian Medicine and the maintenance of a Central Register of Indian Medicine and for matters connected therewith. Statement of Objects and Reasons to the IMCC Act would indicate the purpose of establishing a statutory composite Central Council for Indian Systems of Medicine [Ayurveda, Siddha and Unani] and Homeopathic system of medicine, on the analogy of Medical Council of India. The main function of the Central Council is to evolve uniform standards of education in and registration of the practitioners of these systems of Indian medicine and Homeopathy. For this purpose, the Central Council has to constitute separate committees for Ayurveda, Siddha,

Unani and Homeopathy consisting of members of the respective systems of medicine to deal with matters pertaining to those systems. The registration of practitioners on the Central Register of Indian Medicine and Homeopathy will ensure that medicine is not practiced by those who are not qualified in these systems, and those who practice observe a code of ethics in the profession.

18. Section 14 of the IMCC Act deals with recognition of medical qualifications granted by certain medical institutions in India and the said provision runs thus:

“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 purposes 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.”

19. Section 17 contemplates with the right of persons possessing qualifications included in Second, Third and Fourth Schedules to be enrolled. In terms of Clause[b] of Sub-Section [2] of Section 17, no person who is not possessing requisite qualifications envisaged in the Act and is enrolled on a State Register or the

Central Register of Indian Medicine is entitled to practice the system of Indian Medicine.

20. Section 21 of the Act deals with the withdrawal of recognition. Section 21[1] is quoted hereunder for ready reference:

“21. Withdrawal of recognition.—

(1) When upon report by the inspector or the visitor, it appears to the Central Council—

(a) that the courses of study and examination to be undergone in, or the proficiency required from candidates at any examination held by, any University, Board or medical institution, or

(b) that the staff, equipment, accommodation, training and other facilities for instruction and training provided in such University, Board or medical institution or in any college or other institution affiliated to the University,

do not conform to the standard prescribed by the Central Council, the Central

Council shall make a representation to that effect to the Central Government.”

21. Serial No.2 of the Second Schedule to the IMCC Act before amendment reads thus:

*THE SECOND SCHEDULE
(See section 14)*

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

Name of University, Board or Medical Institution	Recognised Medical Qualifications	Abbreviation for Registration	Remarks
1	2	3	4
PART I – AYURVEDA AND SIDDHA			
Andhra			
1.	xxxx	xxxx	xxxx
2. Andhra Pradesh Parishad, Vijayawada [Examining Body]	Vaidyavidwan

22. By virtue of the notification dated 25.06.2010, Central Government has amended the Second Schedule. Relevant portion of the same reads thus:

“In the Second Schedule to the Indian Medicine Central Council Act, 1970, - [1] in column 4, in the column heading, for the word “Remarks”, the words “Validity Period” shall be substituted.

[2]

[a]

[i]

(ii) against serial number 2, relating to ‘Andhra Ayurveda Parishad, Vijayawada’ [Examining Body], in column 4, the entry “From 1923 to 1975” shall be inserted.”

23. The main arguments of the learned counsel for the appellants is that the amendment carried out to Schedule II as per the notification dated 25.06.2010 inserting the validity period exercising the power under Section 14[2] of the Act is without authority as power is given to the Central Government to amend the Second Schedule under Section 14[2] of the Act only to add to the list of recognized medical qualification and declaring

such added medical qualification shall be recognized only after the specified date.

24. No doubt, power to withdraw recognition of the 'recognized medical qualification' is provided under Section 21[4] of the Act, such power has to be exercised on the report submitted by Inspector or visitor as enumerated in Sections 19 and 20 of the Act to inspect any medical college, hospital or other Institution where education in Indian Medicine is given, or to attend any examination held by the University, Board or Medical Institution. No such circumstances of invoking Section 21 had arisen in the present set of facts. Both the Sections i.e., Section 14 and Section 21 operates in different fields. Indeed, the impugned notification does not deal with the withdrawal of recognition, on the other hand, a validity period for the recognition of the degree of Vaidyavidwan is inserted which is relevant herein. Hence, exercising power under

Section 14[2] of the Act cannot be held to be without authority of law.

25. It is significant to note that prior to enactment of the IMCC Act and constitution of Central Council of Indian Medicine [CCIM], there were different courses of Indian Medicine, prevalent in various States having variation in the duration of course, contents, curriculum and syllabus, and the nomenclature of degree or diploma. After the IMCC Act, 1970 has come into force, as per Section 22, CCIM obtained opinions from the State Governments. The Second Schedule of the IMCC Act recognized some of the old medical qualification as well granted in different States of India under the different State Acts. As per Section 14 of the IMCC Act, degrees/certificates granted by any University, Board or other medical institutions in India which are included in

the Second Schedule of the Act are recognized medical qualifications for the purposes of the Act.

26. It transpires from the submissions of the learned counsel appearing for the CCIM that in order to protect students who had already enrolled into Vaidyavidwan Course of 4 ½ years, by the time the IMCC Act, 1970 came into force on 15.08.1971 and they would graduate in 1975, the validity period was fixed from 1923 to 1975, by the impugned notification dated 25.06.2010. As such, the period of validity fixed whether is valid is the most crucial question. In this regard, it would be beneficial to refer to the judgment of the Hon'ble Apex Court in the case of **Bihar State Council of Ayurvedic and Unani Medicine** supra, the Hon'ble Apex Court considering Section 14 of the IMCC Act, 1970 vis-à-vis Bihar Development of Ayurvedic and Unani Systems of Medicine Act, 1951, with respect to

granting of Graduate in Ayurvedic Medicine and Surgery Degree [GAMS], has observed thus:

“56. The amendment brought about in the Indian Medicine Central Council Act, 1970, in 2003 by introduction of Sections 13A, 13B and 13C are the provisions for continuance of the institution which has not obtained prior permission of the Central Government and, therefore, time limit of three years has been provided under Section 13C to regularize the institution’s affairs as required under the Act by seeking permission of the Central Government. Insertion of Section 13A in the 1970 Central Act in the year 2003 has regulated the opening of an indigenous medical college. The non-obstante clause clearly indicates that a medical institution cannot be established except with the prior permission of the Central Government.

59. The whole spectrum of the amendment brought about by introducing Sections 13A, 13B and 13C indicates that it has an application from the date they have

been introduced by an amendment in the 1970 Central Act. The effect of the amendment brought about is clear to us that all the medical colleges which are in existence or the medical colleges which have to be established should compulsorily seek permission of the Central Government within the period provided and on failure to get the permission of the Central Government the medical qualification granted to any student of such medical college shall not be a recognized medical qualification for the purposes of the 1970 Act. The established colleges are also required to seek permission of the Central Government for the medical qualification to be recognized medical qualification but it would not mean that the already conferred medical qualification of the students studied in such previously established medical colleges would not be a recognised medical qualification under the 1970 Act.

60. 28. On a reasonable construction of these Sections, we hold that the provisions

of Section 13B whereby the qualification granted to any student of a medical college would not be deemed to be a recognized medical qualification would not apply. When a degree has been legally conferred on the students prior to the commencement of the Amending Act of 2003, it shall be treated as a recognized degree although the medical college has not sought permission of the Central Government within a period of three years from the commencement of the Amending Act of 2003.”

27. In the case of **Ashafaque Ansari** supra, the Hon'ble High Court of Delhi in the context of the challenge made to the amendment of Second Schedule to IMCC Act, 1970 vide notification dated 25.06.2010 insofar as Sl.No.6 is concerned, in the backdrop of the qualification of GAMS obtained by the petitioner therein in the year 2012, has held thus:

“14. The further contention of the petitioner that under Section 14(2) of the IMCC Act, 1970, the Central Government is

empowered only to include any unrecognized qualification in the Second Schedule but the deletion of any qualification already existing in the Second Schedule is impermissible, is equally untenable. Section 14(1) and (2) may be reproduced hereunder for ready reference:

"14 (1). The medical qualifications

(2) Any University, Board or other medical institution"

15. It is no doubt true that in exercise of the power so conferred by Section 14(2), the Central Government issued the impugned Notification dated 25.6.2010 by virtue of which in Item No. 6 relating to State Faculty of Ayurvedic and Unani Medicine, Patna, the entry „from 1953 onwards“ in Column No.4 has been substituted as „from 1953 to 2003“. It is no doubt true that consequent to the said amendment, the qualification of GAMS granted by the State Faculty established under State Act, 1951 has not been recognised after 2003. We are of the view that the said amendment under no circumstances can be equated to deletion of a

qualification as sought to be contended by the petitioner. The amendment has only clarified the position that GAMS qualification is not a recognized qualification after 2003 as held by the Supreme Court in Bihar State Council of Ayurvedic (supra). The contention of the petitioner that it would amount to deletion of the qualification of GAMS from the Second Schedule is misconceived and cannot be accepted.”

28. Indeed, it has been observed by the Hon'ble High Court of Delhi that the petitioner therein had placed much reliance upon para 61 of the **Bihar State Council of Ayurvedic and Unani Medicine** supra insofar as the GAMS degree conferred on the appellants-students shall be treated as a recognized degree for the purpose of taking admission to the higher course of study and also for the purpose of employment to substantiate the arguments that the impugned notification dated 25.06.2010 runs contrary to the law declared by the Hon'ble Apex Court. Having regard to

these arguments, the Hon'ble High Court of Delhi has categorically observed that the declaration in para 61 was made only in respect of the appellants therein and it is not as if the Hon'ble Apex Court had declared that GAMS qualification is valid for all purposes as sought to be contended. In the present case, similar arguments have been advanced by the learned counsel for the appellants that a degree which has been legally conferred on the students prior to the issuance of the notification dated 25.06.2010, shall be treated as a recognized degree. Chapter II A deals with the permission for new Medical College, Course, etc., where any medical college is established without the previous permission/opens a new or higher course of study or training including a post-graduate course of study or training/increases its admission capacity in any course of study or training without the previous permission of the Central Government in accordance with Section 13-A, medical qualification granted to any student of such

medical college shall not be deemed to be a recognised medical qualification for the purpose of the IMCC Act. Time limit of three years was provided under Section 13C to regularize the institutions' affairs as required under the Act by seeking permission of the Central Government. In our considered view, the law enunciated by the Hon'ble Apex Court in para 60 of the said judgment in ***Bihar State Council of Ayurvedic and Unani Medicine*** supra, would not be applicable to the present case as the Hon'ble Apex Court exercising the powers under Article 142 of the Constitution has held so, but the same cannot be made applicable generally. Even otherwise, Chapter II A [13A, 13B, 13C] operates in a different domain and the same cannot equated to the power exercised by the Central Government under Section 14[2], in the facts and circumstances of the present case.

29. The learned Single Judge placing reliance on this judgment of the Hon'ble High Court of Delhi, has

upheld the validity of the notification dated 25.06.2010. It is pertinent to note that the Hon'ble High Court of Delhi was dealing with item No.6 relating to State Faculty of Ayurvedic and Unani Medicine, Patna substituted as 'from 1953 to 2003' as against the original entry from 1953 onwards. Indisputedly, the subject matter of grant of registration was with respect to the qualification of GAMS obtained in the year 2012 i.e., subsequent to the issuance of the impugned notification dated 25.06.2010. However in the present set of facts, it is significant to refer to the memo filed by the Board – respondent No.2 along with the copy of the letter dated 31.08.2019 addressed to the Registrar, Andhra Ayurveda Board seeking clarification regarding the validity period of Andhra Ayurvedic Parishad Diploma Course and the letter dated 11.09.2019 addressed by the Government of Andhra Pradesh – Commissioner, Ayush Department to the Board along with the extract of the letter dated 21.02.1976 of Indian

Medicine and Homeopathy Department – Recognition of Diploma, issued by Andhra Ayurvedic Parishad, Vijayawada. The relevant portion of the letter dated 11.09.2019 is quoted here under for ready reference:

“Sub: AYUSH Department – Requesting clarification regarding the validity period of Andhra Ayurved Parishat Diploma Course – Information Submitted – Regarding.

Ref: From the Chief Administrative Officer, of Karnataka Ayurveda and Unani Practitioner Board, Brigade Plaza, Anand Rao Circle, Bangalore, Karnataka State, dt 09/09/2019.

With reference to the subject above cited, it is to inform that the Government of Andhra Pradesh have issued a G.O.Ms.No.160 Health, HH and M.A Department, dt.21/2/1976, the recognition given to the Diplomas issued by the Andhra Ayurveda Parishat shall be cancelled with effect from the date of issue of this order dt.21/02/1976 [Copy enclosed].

This is for your kind information.”

30. The relevant portion of the letter dated 21.02.1976 is quoted here under for ready reference:

- “1] G.O.Ms.No.617 Health dated 6-3-1961.
- 2] From the Director of Indian Medicine & Homeopathy, letter No.33169/F1/73 dated 27-11-1974.
- 3] From the Director of Indian Medicine & Homeopathy Letter No.33160/F1/73 Dated 14-2-1975.

O R D E R:

The Government direct that the recognition given to the Diplomas issued by the Andhra Ayurveda Parishat shall be cancelled with effect from the date of issue of this order.

[BY ORDER AND IN THE NAME OF THE
GOVERNOR OF ANDHRA PRADESH]

Sd/-
M.R.PAI,

SECRETARY TO GOVERNMENT”

31. The interim report of the Board dated 11.09.2013 would indicate that no admissions were taken after 21.02.1976 for the course of Vaidyavidwan. But at the same time, while referring to the stance of the Government of Andhra Pradesh it has been observed that a decision was taken not to conduct any examination after 14.10.1991 with respect to Vaidyavidwan. In order to set right this contradiction found in the interim report, the petitioners ought to have impleaded Andhra Ayurvedic Parishad, Vijayawada as a party to the proceedings but for the reasons best known to them they have not done so. On the other hand, the letter of the Government of Andhra Pradesh Commission Ayurvedic Department referred to above, clarifies that no recognition is given to the certificates issued by the Parishad with effect from 21.02.1976. The documents placed on record by the CCIM [R1 and R2] along with the statement of objections filed before the Writ Court would demonstrate that CCIM has issued

letter dated 21.11.2007 and reminder letter dated 11.08.2008 to Andhra Ayurvedic Parishad, Vijayawada [Examining Body] seeking confirmation for the validity period from 1923 to 1975 for the Vaidyavidwan certificate, but there was no response. The document Nos.R3 and R4 evinces the letters exchanged between the CCIM and the Central Government. Having considered all these aspects, the Central Government after consulting the CCIM, has amended Sl.No.2 to the Second Schedule *inter alia* including the validity period from 1923 to 1975 for Vaidyavidwan Certificate Course.

32. In ***Zile Singh V/s. State of Haryana and Others [(2004) 8 SCC 1]***, the Hon'ble Apex Court has held thus:

“13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is

to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only 'nova constitutio futuris formam imponere debet non praeteritis' – a new law ought to regulate what is to follow, not the past. (See : Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edition, 2004 at p.438).”

33. In ***Bannari Amman Sugars Ltd., V/s. Commercial Tax Officer and Others [(2005) 1 SCC 625]***, the Hon'ble Apex Court has held thus:

“10. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be

informed by reason and it follows that an act uninformed by reason is per se arbitrary.”

There is no cavil on these legal propositions.

34. The aforesaid judgments are cited by the learned counsel appearing for the appellants in support of the arguments that there is absolutely no factual basis to restrict the validity period of Vaidyavidwan qualification for the period from 1923 to 1975; the period 1923 to 1975 is decided arbitrarily and without any empirical data or basis on which such decision could be taken and the validity period ought not to have been fixed retrospectively. Having regard to the nature of lis involved herein, these judgments would be of little assistance to the appellants since the registration of cancellation is made by the Board on 18.09.2013 with immediate effect. Moreover, the memo dated 24.02.2022 filed by the respondent No.1 indicates that several of the appellants had not completed the Vaidyavidwan course

as per the memorandum of marks enclosed therewith. As could be seen the main grounds urged in challenging the notification impugned are, violation of fundamental rights, breach of principles of natural justice, discrimination and non-application of mind in prescribing the validity period retrospectively. No violation of fundamental rights has been established. There is no violation of Article 19 of the Constitution since the right to practice any profession, trade or occupation under Article 19[1][j] is subject to restriction under Article 19[6][i] of having a recognized qualification. Further, a right to health of people at large also plays a significant role. The impugned notification cannot be held to be arbitrary and violative of Article 14. It has been issued in exercise of powers conferred under Section 14[2] of the IMCC Act. By the impugned amendment in Entry 2 of Second Schedule to the Act, a reasonable classification has been created that has a nexus with the object and purpose of the IMCC Act. It is

trite that hardship pales insignificance in considering the validity of a notification. Presumption is always in favour of constitutionality of the notification. It appears that the Parishad had ceased to be functional subsequent to 1975 i.e., after 4 ½ years of the Act coming into force on 15.08.1971 as the sole recognition being given to the BAMS course by the CCIM. The validity period has been fixed from 1923 to 1975 to protect the students who had already enrolled into the Vaidyavidwan course by the time the IMCC Act has come into force. This reasoning stated by the CCIM establishes the nexus, more particularly, when the problem of continuation of old courses by some Institutions and examination boards came to the fore. Sections 21 and 35 of the Act, 1970 and Section 25 of the Act, 1961 has no application since the impugned notification is issued exercising the powers under Section 14[2] of the IMCC Act.

35. At this juncture, it is beneficial to refer to the judgment of the Hon'ble Apex Court in **Rajasthan Pradesh V.S. Sardarshahar** supra, wherein, it is observed thus:

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

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

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

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

This judgment would be applicable to the present appeals in full force which has been rightly relied upon by the learned Single Judge.

36. At the cost of repetition we observe that, fixing the validity period cannot be construed as deletion of the qualification as contended by the appellants but is a declaration that the Vaidyavidwan course shall be a recognized medical qualification only for the specified period prescribed. The said power is vested with the Central Government under Section 14[2] of the IMCC Act whereby the Second Schedule would be amended by issuing notification in the Official Gazette. The cancellation orders issued by the Board dated 18.09.2013 are with immediate effect not with retrospective effect. Hence, the arguments of the learned counsel for the appellants deserve to be negated.

37. Section 17[4] of the Karnataka Ayurvedic Naturopathy Act, 1961 provides an appeal remedy

against the order of the Board to the State Government. In the background of the genuineness of the certificates issued by the Parishad being disputed by the Board as fake/fabricated, these disputed questions of facts would have been agitated before the Appellate Authority. Hence, learned Single Judge having upheld the validity of the notification reserved liberty to the appellants to prefer appeal/s before the Appellate Authority under Section 17[4] of the Act, 1961 within a period of six weeks from the date of receipt of the order further observing that if such appeal is preferred by the appellants, the time spent in the litigation before the Writ Court would be considered for the purpose of condonation of delay in presenting the memorandum of appeal. However, the appellants without availing the said alternative remedy had approached this Court.

38. Hence, we are of the considered view that it would be appropriate to relegate the parties to the

Appellate Authority on this point. However, it is observed that if such appeals are filed within a period of six weeks from the date of the receipt of the certified copy of this order, the Appellate Authority shall consider the same on merits without objecting to the period of limitation.

39. For the reasons aforesaid, we find no grounds to interfere with the well reasoned order of the learned Single Judge.

Resultantly, Writ Appeals stand dismissed.

No order as to costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

nd/NC.