DR. MUKHTIAR CHAND & ORS V. THE STATE OF PUNJAB & ORS [1998] RD-SC 491 (8 October 1998)

K.T.THOMAS, SYED SHAH MOHAMMED QUADRI

ACT:

HEADNOTE:

JUDJMENT QUADRI.J.

These cases raise questions of general importance and practical significance questions relating not only to the right to practise medical profession but also to the right to life which includes health and well-being of a person. The controversy in these cases was iriggered off by the issuance of declarations by the state Governments under clause (iii) of Rule 2(ee) of the Drugs and Cosmetics Rules, 1945 (for short 'the Drugs Rules') which defines "Registered Medical Practitioner". Under such declarations, notified Vaids/Hakims claim right to prescribe Allopathic drugs covered by the Indian Drugs and Cosmetics Act, 1940 (for short 'the Drugs Act'). Furthermore, Vaids/Hakims who have obtained degrees in integrated courses claim right to practise allopathic system of medicine.

In exercise of the power under clause (iii) of Rule 2(ee) the State of punjab issued Notification No. 9874-Thbtt-67/34526 dated 29th October, 1967 declaring all the Vaids/Hakims who had been registered under the East Punjab Ayurvedic and Unani Practitioners Act, 1949 and the Pepsu Ayurvedic and Unani Practitioners Act, 2008 BK and the Punjab Ayurvedic and Unani Practitioners Act, 1963 as persons practising modern System of Medicine for purposes of the Drugs Act. One Dr. Sarwan Singh Dardi who was a medical practitioner, registered with the Board of Ayurvedic and Unani System of Medicines, Punjab, and who was practising modern system of medicines was served with an order of the District Durgs inspector, Hoshiarpur, prohibiting him from keeping in his possession any allopathic drug for administration to patients and further issuing general direction to the chemists not to issue allopathic drugs to any patient on the prescription of the said doctor. That action of the Inspector was questioned by Dr.Dardi in the Punjab & Haryana Court in C.W.P.No. 2204 of 1986. He claimed that he was covered by the said notification and was entitled to prescribe allopathic medicine to his patients and store such drugs for their treatment (hereinafter referred to as Dardi's case). A Division Bench of the Punjab & Haryana High Court, by judgment dated September 17, 1986, held that the said notification was ultra vires the provisions of sub-cluse (iii) of clause (ee) of rule 2 of the Drugs Rules and also contrary to the provisions of *Indian Medical Council Act, 1956* and accordingly dismissed his writ petition.

Writ petitions in the High Court of Punjab and Haryana for a mandamus restraining the authorities concerned from interfering with their right to prescribe medicines falling under the Drugs Act on the strength of such notifications were also dismissed by the High Court and the aggrieved persons have filed appeals before us by special leave.

Writ Petitions are filed in this Court by various persons claiming that they are registered medical practitioners within the meaning of the said notification and are entitled to practise 'modern scientific system of medicine. It may be noticed here that the petitioners in W.P.No.1082/88 and 359.91 were registered by Ayurvedic and Unani Medical Council in the State of Bihar. The petitioner in W.P.No.423/97 holds degree of B.A.M.S. from the Maharishi Dayanand University, Rohtak. He asserts that on the basis of said degree he is entitled to practise 'modern scientific system of medicine'.

On the same subject cases came up before Rajasthan High Court. The Jodhpur Branch of Indian Medical Association filed Civil Writ Petition No. 1777/82 in the Hingh Court. of Rajasthan seeking a declaration that rule 2(ee)(iii) of the Drugs Rules and the Circular No.26(24)M.E.(Group-T)82 issued by the Government of Rajasthan on July 26, 1982, were void and ultra vires the provisions of the Drugs Act and the *Indian Medical Council Act, 1956*. By judgment dated September 29, 1994 a Division Bench of the Rajasthan High Court held that the said rule was without any legislative competence and consequentially the notification was illegal and void. The correctness of the said judgment has been assailed by the Private Medical Practitioners Association of India (which represents the beneficiaries of a similar circular issued by the Government of Rajasthan) in S.L.P.No. 8422 of 1995. On the Strength of the aforesaid judgemnt of the Division Bench, another writ petition filed by M/s. Chandasi Private Medical Practitioners Sansthan, a registered society, was also dismissed. That judgment is also challended by filling a special leave Petition.

We heard all the said civil appeals, special leave petitions and writ petitions together as the question involved in all the cases is common.

Mr.D.D.Thakur, learned senior counsel appearing for the appellants-petitioners in the appeals and special leave petitions, has argued that the grounds on which the Punjab & Haryana High Court dismissed Dr.Dardi's writ petition we not applicable to the appellants-petitioners and without noticing the difference the Division Bench denied relief to them so the judgments under appeal are unsustainable in law.

The rule in question, submits the learned senior counsel, was formed under the Drugs Act having regard to the factual position that the qualified allopathic doctors are not available in the rural areas and that persons like the appellants-petitioners have been catering to the medical needs of the residents of such areas, as such the rule is in public interest. The rule, it is argued, cannot be said to be illegal for want of legislative competence as Section 33 of the Drugs Act confers very wide powers on the Central Government to frame rules. As the class of medical practitioners postulated by clause (iii) of the rule can properly be identified by the State Governments they are empowered to declare, by general or specific order, such class and the notifications issued by various State Governments are well within the ambit of the rule. In any event urged the learned counsel, the High Court ought not to have dismissed the writ petition in limine and that it ought to have gone into the merits of the case of the petitioners on the basis of the qualifications possessed by them and allowed them to prescribe allopathic medicines as registered medical practitioner.

Mr.K.T.S.Tulsi, learned senior counsel, supported the notification issued by the State Government and submitted that had the State Government so desired it would have withdrawn the notification but the very fact that it had not done so, would show that the registered medical practitioners have been rendering yeoman service to the citizens, hence, the notification most be given full effect.

Ms. Indra Jaising, learned senior counsel, adopted the arguments of Mr.thakur in general, but focussed on the plea that since integrated courses in Ayurvedic medical education comprises of various topics under modern medicine and when such persons have put in considerable years of practice covering such topics also, any infraction of their right to prescribe medicines which may fall under the Drugs Act would very adversely affect the areas where they are mostly serving now.

Mr.P.C.Jain, learned senior counsel appearing for the petitioners in Writ Petition No. 423 of 1997 while supporting the contention of Mr.Thakur, highlighted that the right of practitioners of Indian Medicine to practise modern scientific system of Medicine (Allopathic Medicine) is protected under Section 17(3)(b) of Indian Medicine Central Council Act, 1970.

Mr.Kirit N.Raval, learned Additional Solicitor General appearing for the Central Government, has submitted that the Central Governemnt is maintaining equal distance from both the contenders, namely, the doctors of modern scientific medicine (allopathic)and the qualified Vaids/Hakims of Indian medicine; though the Central Government had taken the plea in the High Courts that practice in allopathic medicine should not be allowed by non-allopathic doctors and in that he would support the view taken by the High Courts of Rajasthan and Punjab & Haryana regarding validity of rule 2(ee)(iii) and the notifications issued thereunder, he would however, add that as a matter of fact many Ayurvedic Vaids and Unani Hakims are prescribing allopathic drugs and that the Central Government will abide by the decision of this Court. Here we are constrained to observe that the stand taken by the Central Government shows utter bewilderment inasmuch as the authority which framed rule is not interested in supporting the legality and the validity of the rule not does it want to do away with the Rule whole heartedly.

Mr.K.S.Bhati, learned counsel appearing for the State of Rajasthan, in his arguments strongly supported the judgemnt of the Rajasthan High Court under appeal.

Mr.H.M.Singh appearing for the State of Punjab also supports the judgment of Punjab and Haryana High Court and went further and submitted that the rule itself was invalid -- a strange plea by the State Government indeed.

Mr. Devender Singh appearing for Respondent No. 1 in Special Leave Petition (c) No.8422 of 1995 also maintained the arguments of Mr. Bhati.

Mr. Ranjit Kumar who appeared for allopathic doctors, vehemently contended that a non-allopathic doctor could not be permitted to prescribe allopathic medicines; he supported the grounds on which the Rajasthan High Court had struck down the rule and also the interpretation placed by the Punjab & Haryana High Court on the said rule. His alternative submission is that even if Vaids/Hakims are held to be within the ambit of clause (iii) after the enactment of

Section 15(2)(b) of the Medical Council Acc and the Indian Medicine Central Council Act, 1970 that clause ceased to be operative.

On the submissions made by the learned counsel for the parties, the questions which fall for determination are :- 1.Whether Rule 2(ee)(iii) of the Drugs Rule is bad for want of legislative competence; and are the impugned notifications issued by the State Governments, under clause (iii) of the said rule, declaring the categories of persons who were practising modern system of medicine invalid in law.

2.What is the impact of *Indian Medical Council Act, 1956* and Indian Medical Central Council Act, 1970 on rule 2(ee)(iii) of the Drugs Rules and the notifications issued thereunder? and 3.Whether the persons who have qualified the integrated courses in Ayurveda and Unani from vairous universities are entitled to practise in and prescribe allopathic medicines.

Before adverting to these questions, it would be useful to notice various systems of medicine in vogue in India and the statutes regulating them.

The systems of medicines generally prevalent in India are Ayurveda, Sidha, Unani Allopathic and Homeopathic.

In Ayurveda, Sidha and Unani systems the treatment is based on the harmony of the four humors, whereas in allopathic system of medicine treatment of disease is given by the use of a drug which produces a reaction that itself neutralizes the disease. In Homeopathy, treatment is provided by the likes.

Of the medical systems that in vogue in India, Ayurveda had its origin in 5000 B.C. and is being practised throughout India but Sidha is practised in the Tamil-sepeaking areas of South India. These systems differ very little both in theory and practice. The Unani system dates back to 460-370 B.C. but that had come to be practised in India in the 10th Century A.D. (Park's Textbook of Preventive and Social Medicine, 15th Edn. pp.1 & 2).

Allopathic medicine is comparatively recent and had its origin in the 19th century.

Noticing that for practising allopathic system of medicines the degrees and diplomas were being issued by private institutions to untrained or insufficiently trained persons and some of the were colorable imitations of those issued by recognized Universities and corporations which was resulting in unqualified persons posing to the public as possessing qualifications in medicine and surgery which they did not possess. The Indian Medical Degrees Act, 1916 (for short '1916 Act') was enacted to ban conferring of degrees or issuing of certificates, licences etc. to practise western medical science, by persons or authorities other than those specified in the Schedule and notified by State Governments. The western medical science was defined to mean the western methods to allopathic medicine obstructors and surgery; the Homoeopathic, Ayurvedic and Unani system of medicine were excluded from its purview. The next Central legislation on the subject is Indian Medical Council Act, 1933 (for short '1933 Act'). This 1933 enactment was introduced to constitute a Medical Council in India in order to establish a uniform minimum standard of higher qualifications in medicine for all the erstwhile provinces.

Section 2(d) of that Act defines the word "medicine" to mean "modern scientific medicine" which connotes allopathic medicine) including surgery and obstetrics, but excluding veterinary medicine) including surgery and obstetrics, but excluding veterinary medicine and surgery. Although Homeopathic, Ayurvedic or Unani system was not expressly excluded from the definition, yet a perusal of the Schedule makes it abundantly clear that those system of medicines were not within the scope of that Act.

It may be noted that since 'level, medical and other professions' is them 26 of Fist III [Concurrent List] of Seventh Schedule to our Constitution, both the State Legislatures and the Parliament have enacted on the subject of medical profession. Now all these systems of medicines are governed by Central Acts. The *Indian Medical Council Act* , 1956 (which has repealed 1933 Act) regulates modern system of medicine; the Indian Medicine Central Council Act, 1970 regulates Indian medicine and The Homeopathic Central Council act, 1973 regulates practice of Homeopathic medicine. Here we are not concerned with Homeopaths in regard to practice of allopathic medicine by a homeopath, this Court concluded thus, in Poonam Verma vs. Ashwin Patel, (1996) 4 SCC 332:

"A person who does not have knowledge of a particular system of medicine but practices in that system is a quack and a mere pretender to medical knowledge or skill, or to put it differently, a charlatan." The erstwhile provinces were and thereafter the present States are also having their own legislation with regard to medical practitioners in different systems (Indian medicine as well as allopathic) and are maintaining registers of medical practitioners in those systems. They are too many to enlist them here least this judgment will be needlessly burdened. However, we shall presently refer to the relevant Acts of the States to which the appeals relate.

The Drugs Act enacted with a view to regulate the import, manufacture, distribution and sale of drugs to curb the evil of adulteration of drugs and production of spurious and sub-standard drugs which were posing serious threat to the health of the community. The amended definition of 'Drug' in clause (b) of Section (3) in the Drugs Act is inclusive and comprehensive but it does not include 'Ayurvedic, Siddha or Unani' drug. Indeed at the time of its enactment in 1940, it was not intended to apply to such drugs. It is only by Act 13 of 1964 that those drugs are also brought within the purview of the Drugs Act by including their definition in clause (a) of Section 3 and Chapter IVA in the Act.

Section 33 which falls in Chapter IV of the Drugs Act, empowers the Central Government to the provi=sione of Chapter IV which deals with manufacture, said and distribution of drugs and cosmetics. Sub-section (2) of Section 33 enumerates many subjects in clauses (a) to (g) in respect of which rules may be made. Section 33-A says that Chapter IV shall not except as provided in the Act, apply to Ayurvedic, Shidda or Unani drugs. On December 21, 1945, in exercise of the powers conferred under Section 33, the Central Government framed the Drugs Rules. Rule 2 contains the definition of the terms and expressions used in the Rules. Rule 2(ee), which was inserted by SO 1196 dated April 9, 1960 with effect from May 14, 1960, defines the expression "registered medical practitioner".

For purposes of the *Pharmacy Act, 1948*, the expression medical practitioner is defined by substituting Section 2(f) therein with effect form 1.5.1960. Section 2(f) of *Pharmacy Act* and Rule 2(ee) of the Drug Rules are identical.

Clause (i) to (iii) of Rule 2(ee) are relevant for our purpose and they read as under:

"2(ee) Registered medical practitioner means a person - i)holding a qualification granted by an authority specified or notified under Section 3 of the Indian Medical degrees Act, 1916 (7 of 1916), or specified in the Schedules to the Indian Medical Council Act, 1956 (102 of 1956); or ii) registered or eligible for registration in a medical register of a State meant for the registration of persons practising the modern scientific system of medicine (excluding the Homeopathic system of medicine); or iii) registered in a medical register (other than a register for the registration of Homeopathic practitioners) of a State, who although not falling within sub-clause (i) or sub-clause (ii) is declared by a general or special order made by the state Government in this behalf as a person practising the modern scientific system of medicine for the purposes of this Act.

iv) and (v) *** *** *** ***" [They are omitted as they are not material for this batch of cases.] A plain reading of clauses, extracted above shows that the ambit of clause (iii) must necessarily exclude those who would fall under the first two clauses. There is no controversy that categories (i) and (ii) relate to practitioners of allelopathic medicines. Hence, the third category falling under clause (iii) on which vaids/Hakims (non-Allopathic doctors) base their claim may be analysed here. (a) It takes in persons who are registered in a medical register of a State (it may be noticed here that such a register should not be meant for registration of Homeopathic practitioners but it need not be a register meant for registration of persons practising modern system of medicine); (b) such persons do not fall within category (i) or category (ii) of clause (ee), as noted above (c) they most be declared as persons practising modern system of medicine by general or special order made by the State Government in that behalf; and (d) such a declaration would operate only for purposes of the Drugs Act and the Rules made thereunder.

The learned counsel argued at length on the question whether clause (iii) is also intended for left out qualified allopathic doctors. But if that interpretation is accepted the said clause will become redundant as admittedly clauses (i) and (ii) exhaust all categories of practitioners entitled to practice in allopathic medicine. It was conceded at the end of the day and, in out view rightly, that the clause takes in medical practitioners other than qualified practitioners entitled to practise allopathic medicine. And as practitioners of Homeopathic medicine are specifically excluded, it becomes evident that this category comprises of practitioners who are enrolled in a medical register of a State and though not answering the description of clauses (i) and (ii) are de facto practising modern system of medicine (allopathic) and those facts are declared by the State Government concerned. By this sub-clause, a de facto practitioner of modern scientific medicine (allopathic) is recognized as a registered medical practitioner and is enabled to prescribe drugs covered by the Drugs Act.

This being the content of clause (iii) of Rule 2(ee), we shall now turn to the question of validity of the said clause and the circular/notifications issued thereunder by the State Governments. Letter No.26(24) M.E. (group-1)82 dated July 27, 1982 was issued by the Rajasthan

Government, communicating the approval of recommendations subject to the conditions specified therein for purposes of issuing the notification under clause (iii) (herein referred to as 'circular') and the notification No. 9874-IIBII-67/34526 dated October 29, 1967 was issued by the Punjab Government in exercise of powers conferred under the said clause.

The learned counsel appearing for allopathic doctors and their association supported the view of the Rajasthan High Court that the rule is bed for want of legislative competence. We are afraid we cannot accede to this contention. Section 33 of the Drugs Act confers wide power on the Central Government to make rules. Section 33, in so far as it is relevant, is reproduced hereunder :

"33 Power of Central Government to make rules.

1.The Central Government may after consultation with or on the recommendation of the Board and after previous publication by notification in the Official by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Chapter Provided that consultation with the Board may be dispensed with if the Central Government is of opinion that circumstances have arisen which render it necessary to make rules without such consultation, but in such a case the Board shall be consulted within six months of the making of the rules and the Central Government shall take into consideration any suggestions which the Board may make in relation to the amendment of the said rules.

2.Without prejudice to the generality of the foregoing power, such rule may (a) to (d) ****** *** (e)prescribe the forms of licences for the manufacture for the sale or for distribution, for the sale and for the distribution of drugs or any specified drug or class of drugs or of cosmetics or any specified cosmetic or class of cosmetics, the form of application for such licences, the conditions subject to which such licences may be issued, the qualifications of such authority and the fees payable therefor and provide for the cencelation or suspension of such licences in any case where any provision of this Chapter or the rules made thereunder is contravened or any of the thereunder is contravened or any of the conditions subject to which they are issued is not complied with (f) to (p) *** *** *** (q)provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter or the rules made thereunder, of any specified drug or class of drugs or cosmetic or class of cosmetics." Sub-section (1) of Section 33 of the Drugs Act empowers the Central Government to make rules for purposes of giving effect to the provisions of Chapter IV which deal with manufacture, sale and distribution of drugs and cosmetics.

This is a general power of great amplitude. Withhot prejudice thothe generality of the power in sub-section (1) specific topics are itemized in sub-section (2), in clauses (a) to (q), in respect of which rules may be made by the Central Government. Among them sub-clause (e) relates to the power to prescribe the forms of licences for the manufacture for sale, or for distribution for the sale and for the distribution of drugs, or any specified drugs or classes of drugs or of cosmetics or of any specified cosmetics or any class of cosmetics, the form of application for such licences, the condition subject to which such licences may be issued, the authority empowered to issue the same, the qualification for such authority, etc. Section 18 which falls in Chapter IV, specifically deals with prohibition for manufacture and sale of certain drugs and cosmetics. Rule 65 provides

conditions of licence to sell, stock or exhibit or offer for sale or distribute for wholesale, retail etc.

Various sub-urles of the said rule contain as a condition of licence that the supply of drugs should be on the prescription of a 'registered medical practioner' (See Conditions Nos. 2, 3(1), 5(1), 9 and 9(a)].

From the above discussion what emerges is that drugs can be sold or supplied by pharmacist or druggist only on the prescription of a 'registered medical practitioner' who can also store them for treatment of his patients. It has, therefore, became necessary for the rule-making authority to define the expression 'registered medical practitioner' for the purposes of the Act and the Rules. Rule 2(ee) does no more than defining that expression, which is within the scope of Section 33(1) as well as 33(2)(e). Therefore it cannot be said that the rule making authority was lacking legislative competence to make rule 2(ee). The High Court misdirected itself by looking to the provisions of Sections 6 and 12 which do not contain the rule-making power. It is only Section 33 which contains the rule-making power. The High Court has also erred in searching for a power to frame rules for the registration of medical practitioners; obviously such a power is not conferred under the Act. The rule veritably does not deal with registration of the medical practitioner.

It only defines the expression 'registered medical practitioners' by specifying the categories of medical practitioners which fall within the definition for purposes of the Drugs Act and the Drugs Rules. For the aforementioned reasons, we are unable to sustain the view taken by the High Court of Rajasthan that the impugned Rule 2(ee)(iii) suffers from the vice of lack of legislative competence and is ultra vires the Drugs Act.

Now coming to the notifications issued by the Punjab Government on October 29, 1967 and the Circular issued by the Rajasthan Government on July 26, 1982, referred to above, it has already been pointed out that for purposes of clause (iii) of Rule 2(ee) what is required is not the qualification in modern scientific system of medicine but a declaration by a State Government that a person is practising modern scientific system and that he is registered in a medical register of the State (other than a register for registration of Homeopathic practitioner). A notification can be faulted with only if those requirements are not satisfied. The Punjab and Haryana High Court proceeded with an assumed intention of the rule-making authority that it could not be within its conception to bring Vaids/Hakims, the practitioners of Ayurveda (Indian System of Medicine), within the purview of the said expression and that it could have only envisaged registration of medical practitioner of modern scientific system holding qualifications mentioned in clauses (i) and eligible for registration under clause (ii) and on that basis held the said notification was ultra vires the rules.

From what has been discussed above, we are unable to uphold the view of the Punjab and Haryana High Court.

We have perused the above said notifications issued by the State Governments and we find that they are well within the confines of clause (iii) of rule 2(ee). Therefore, we conclude that the said circular and the notification issued by the said State Governments declaring the categories of

Vaids/Hakims who were practising modern system of medicine and were registered in the State Medical Registers, are valid in law.

Points 2 and 3 have some over lapping so it will be convenient to discuss them together. The right to practise any profession or to carry on any occupation trade or business in no doubt a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. But that right is subject to any law relating to the professional or technical qualifications necessary for practsing any profession or carrying on any occupation or trade or business enacted under clause 6 of Article 19. The regulatory measures on the exercise of this right both with regard to standard of professional qualifications and professional conduct have been applied keeping in view not only the right of the medical practitioners but also the right to life and proper health care of persons who need medial care and treatment. There can, therefore, be no compromise on the professional standards of medical practitioners. With regard to ensuring professional standards required to practise allopathic medicine the 1956 Act. was passed which deals also with reconstitution of the Medical Register. Thus, for the first time an Indian Medical Register for the whole of India came to be maintained from 1956. In the 1956 Act.

Section 2(f) defines "medicine" to mean 'modern scientific medicine' in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery and the expression recognised medical qualification is defined in Section 2(h) to mean any of the medical qualifications included in the Schedules to the Act.

There more expressions in the 1956 Act have to be noticed here. But before we do so, it must be noted here that the object and reasons of the 1956 Act took note of the fact that there are local Acts in the States providing for State Medical Council and maintenance of State Medical Registers for registration of qualified practitioners in western medical science or modern scientific medicine, that is allopathic medicine. Now, reverting to the expressions in 1956 Act, they are : "State Medical Council" defined in Section 2(j) as a medical council constituted under any law for the time being in force in any State regulating the registration of practitioners of medicine; "State Medical Register" defined in Section 2(k) to mean a register maintained under any law for the time being in force in any State regulating the registration of practitioners of medicine and 'Indian Medical Register' to mean the medical register maintained by the Council. The 1956 Act provides for the recognition of medical qualifications granted by Universities or medical institutions in and outside India which are specified in the Schedules. Section 15 which is relevant, was in the following terms when the said Act was passed in 1956 :

"15. Subject to the other provisions contained in this Act, the medical qualifications included in the schedules shall be sufficient qualification for enrolment on any State Medical Register." It laid down that the qualifications included in the Schedules should be sufficient qualification for enrolment on any State Medical Register. It may be pointed out here that in none of the Schedules the qualifications of integrated courses figure consequently by virtue of this section persons holding degrees in integrated courses cannot be registered on any State Medical Register.

By Act 24 of 1964, Section 15 of the 1956 Act was modified by keeping the existing section as sub-section (1) and by adding two more, sub-sections (2) and (3), which read thus :

"(2)Save as provide in Section 25, no person other than a medical practitioner enrolled on a State Medical Register - (a)shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority.

(b)shall practices medicine in any State (c)shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner.

(d)shall be entitled to give evidence at any inquest or in any Court of Law as an expert under Section 45 of the Evidence Act, 1872 or on any matter relating to medicine.

(3)Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both." For the present discussion, the germane provision is Section 15(2)(b)of the 1956 Act which prohibits all persons from practising modern scientific medicine in all its branches in any State except a medical practitioner enrolled on a State Medical Register. There are two types of registration as for the State Medical Register is concerned.

The first is under Section 25, provisional registration for the purposes of training in the approved institution and the second is registration under Section 15(1). The third category of registration is in the Indian Medical Register' which the Council is enjoined to maintain under Section 21 for which recognised medical qualification is a prerequisite.

The privileges of persons who are enrolled on the Indian Medical Register are mentioned in Section 27 and include right to practise as medical practitioner in any part of India. 'State Medical Register' in contra-distinction to 'Indian Medical Register', is maintained by the State Medical Council which is not constituted under 1956 Act but is constituted under any law for the time being in force in any State; so also a State Medical Register is maintained not under 1956 Act but under any law for the time being in force in any State regulating the registration of practitioners of medicine. It is thus possible that in any State, the law relating to registration of practitioners of modern scientific medicine may enable a person to be enrolled on the basis of the qualifications other than the 'recognised medical qualification' which is a pre-requisite only for being enrolled on Indian Medical Register but not for registration in a State Medical register. Even under the 1956 Act, 'recognised medical qualification' is sufficient for that purpose. That does not mean that it is indispensably essential. Persons holding 'recognised medical qualification' cannot be denied registration in any State Medical Register. But the same cannot be insisted upon for registration on a State Medical Register. However, a person registered in a State Medical Register cannot be enrolled on Indian Medical Register unless he possesses 'recognised medical qualification'. This follows from a combined reading of Sections 15(1), 21(1) and 23. So by virtue of such qualifications as prescribed in a State Act and on being registered in a State Medical Register, a person will be entitled to practise allopathic medicine under Section 15(2)(b) of the 1956 Act.

In the above view of the matter, we are unable to agree with the following observations of this Court in A.K.Sabhapathy vs. State of kerala, (1992) Supp1. (3) SCC 147 :

"These provisions contemplate that a person can practise in allopathic system of medicine in a State or in the country only if he possesses a recognised medical qualification. Permitting a person who does not possess the recognised medical qualification in the allopathic system of medicine would be in direct conflict with the provisions of the Central Act." We have perused the Bombay Medical Act, 1912, Bihar and Orissa Medical Act, 1916, Punjab Medical Registration Act 1916, Rajasthan Medical Act 1952 and Maharashtra Medical Council Act, 1965 which regulate maintenance of registers of medical practitioners and the entitlement to practice allopathic medicine. Under those Acts State Medical Registers are maintained. Section 7(3) of the Bombay Act of 1912, enabled the Provincial Government, after consulting the State medical council, to permit the registration of any person who was actually practising medicine in Bombay Presidency before 25th June, 1912, this seems to be the only case of registration without requisite qualification.

Further persons possessing Ayurvidya Visharad of the Tilak Maharashtra Vidyapeeth of Poona, obtained during the years 1921-1935 (which was included in the Schedule to that Act on 31st. September, 2939 pursuant to Notification No. 3020/33 dated 12.9.1939) were entitled to be registered in the State Medical Register; this is the only Ayurvedic qualification on the basis of which persons were eligible to be registered on the State Medical Register in Maharashtra; further with regard to rural areas, the prohibition to practice allopathic medicine under that Act did not apply provided a person had commenced practice in any village in the rural area prior to 1912. None of the petitioners has claimed benefit of these exceptions. We could not find any other provision which enables a person, other than those possessing qualification prescribed in the Schedules to the Acts, to be registered on the State Medical Register to practise allopathic medicine.

So it can be observed that if any State law relating to registration of Medical practitioners permits practise of allopathic medicine on the basis of degree in integrated medicines, the bar in Section 15(2)(b) of the 1956 Act will not apply.

Rule 2(ee), as noted above, has been inserted in the Drugs Rules with effect from May 14, 1960. Section 15 of the 1956 Act, as it then stood, only provided that the medical qualifications in the Schedule shall be sufficient qualification for enrolment on any State medical register and so there was no inconsistency between the section and the Rule when it was brought into force. But after Sub-section (2) of Section 15 was inserted in the 1956 Act, with effect from 15.09.1964, which inter alia, provides that on person other than a medical practitioner enrolled on a 'State Medical Register' shall practise modern scientific medicine in any State, the right of non-allopathic doctors to prescribe drugs by virtue of the declaration issued under the said drugs Rules, by implication, got obliterated. However, this does not behar them from prescribing or administering allopathic drugs hold across the counter for common ailments.

Here it may be necessary to refer to the development of law with regard to Indian medicine. In pre-constitutional era each province of India was having its own enactment regulating the registration and practice in Indian medicines like -- Uttar Pradesh Indian Medicine Act, 1939. The Punjab Ayurvedic and Unani Practitioners Act, 1949 etc. After coming into force of the Constitution, many State legislations were enacted to regulate the practise of Indian medicine, Ayurvedic and Unani like Punjab Ayurvedic and Unani Practitioners Act, 1963 etc. However, on

the model of 1956 Act, the Parliament enacted The Indian Medicine Central Council Act, 1970 (for short '1979 Act'). The schemes and provisions of 1970 Act and 1956 Act are analogous. 'Indian Medicine' is defined in Section 2(e) of the Act to mean the system of Indian medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb whether supplemented or not by such modern advances as the Central Council may declare by notification from time to time. In Section 2(j) the expression "State Register of Indian Medicine" is defined to mean 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. The Act contemplates having separate Committees for Ayurvedic, Siddha and Unani medicines. Section 17 enables, inter alia, the persons who possess medical qualifications mentioned in the Second, Third or Fourth Schedule to be enrolled on any state Register of Indian Medicine. A perusal of the Second, Third and Fourth Schedules shows that they contain both integrated medicine as well as other qualifications. So a holder of degree in integrated medicine is entitled to be enrolled under Section 17 of 1970 Act. Section 22 authorises the Central Council to prescribe the minimum standards of education in Indian medicine required for granting recognized medical qualifications by Universities, Boards or medical institutions in India. The Central Council is enjoined to maintain Central Register of Indian medicine containing the particulars mentioned therein and Section 25 lays down procedure for registration in the Central Register of Indian medicine. The counterpart of Section 15 of 1956 Act is Section 17 of 1970 Act. We shall quote it here :

"17.(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 possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian Medicine - i)shall hold office as Vaid Siddha, Hakim or Physician or any other office (by whatever designation called) in Govt. or in any institution maintained by a local or other authority;

ii)shall practice Indian medicine in any State;

iii)shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

iv)shall be entitled to give evidence at any inquest or in any court of law as an expert under Section 45 of the *Indian Evidence Act, 1872*, on any matter relating to Indian medicine.

3)Nothing contained in sub-section (2) shall affect - i)the right of a practitioner of Indian medicine enrolled on a State Register of Indian Medicine to practice Indian medicine in any State merely on the ground that, on the commencement of this Act, he does not possess a recognised medical qualification;

ii)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;

iii)the right of a person to practice 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;

iv)the rights conferred by or under the Indian Medical Council act, 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.

4.Any person who acts in contravention of nay provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both." A perusal of the provisions extracted above, shows that sub-section (1) prescribes qualifications considered sufficient for enrolment on any State Register of Indian Medicine. Sub-section (2) ordains that all persons except those who possess a recognised medical qualification and are enrolled on a State Register or the Central Register of Indian medicine, are prohibited from doing any of the acts mentioned in Clause (a) to (d) of that sub-section.

Sub-section (3), however, carves out an exception to the prohibition contained in sub-section (2). Clause (a) thereof saves the right to practise of any medical practitioner of Indian Medicine who was not having recognised medical qualification on the date of the commencement of 1970 Act but who was enrolled on a State Register to practise that system of medicine; clause (b) protects the privileges which include the right to practise any system of medicine which was 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 who was enrolled on a State Register of Indian medicine; Clause (c) saves the right of a person to practise Indian medicine was maintained at the commencement of that Act provided he has been practising in the Indian Medicine for not less than five years before the commencement of the Act and Clause (d) protects the rights conferred by or under the 1956 Act including the right to practise modern medicine possessing any qualification included in that Act. In other words, under clause (d) the right to practise modern scientific medicine in all its branches is confined to only such persons who possess any qualification included in the Schedules to 1956 Act. In view of this conclusion it matters little if the practitioners registered under 1970 Act are being involved in various programmes or given postings in hospitals of allopathic medicine and the like.

It will be appropriate to notice that 1970 Act also maintains similar distinction between State register of Indian medicine and Central register of Indian medicine.

Whereas the State register of Indian medicine is maintained under any law for the time being in force in any State regulating the registration of practitioners of Indian medicine, the Central register of Indian medicine has to be maintained by the Central Council under Section 23 of that Act. For a person to be registered on the Central register, Section 25 enjoins that registrar should be satisfied that the persons concerned was eligible under that Act for such registration. Keeping

this position in mind, if we read Section 17(3)(b), it becomes clear that the privileges which include the right to practise any 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, is not affected by the prohibition contained in sub-section (2) of Section 17.

To ascertain if any State law confers 'the right to practise any system' we have perused Bombay Medical practitioners Act, 1938, Rajasthan Indian Medicine Act, 1953 and Maharashtra Medical Practitioners Act, 1961 which deal with registration of practitioners of Indian Medicine in those States. The requirement as to registration was also contemplated under Pepsu Ayurvedic & Unani Practitioners Act, 2008 R.K. (No.

XII of 2008 B.K.) and East Punjab Ayurvedic & Unani practitioners Act. 1949 as well as under Punjab Ayurvedic and Unani Practitioners Act 1963, which repeated the said two Acts. This 1963 prescribes qualifications as specified in the Schedule for the purpose of registration as a registered practitioner. In the said Act of 1963 also, there is an express provision prohibiting a person other than registered practitioners, as defined therein, to practise or hold out whether directly or by implication as practising or being prepared to practise Ayurvedic system or Unani system.

Section 16(3) of the Pepsu Ayurvedic and Unani Practitioners Act, 2008 B.K. enjoins that no Vaids/Hakims shall be registered under the Act if the Registrar is satisfied that such a person is found to practise any other system of medicine for which he did not hold any certificate or diploma. But we could not lay our hands on any provision in the said State Acts under which the right to precise any system of medicine is conferred on practitioners of Indian medicine registered under those Acts.

Nevertheless, Ms. Indira Jaising asserted that the prohibition contained in Section 15(2) and the punishment provided in Section 15(3) of the 1956 Act would apply only to persons practising allopathic system of medicine without obtaining the registration but does not apply to practitioners of Indian medicine. This submission is too broad to merit acceptance. It may be pointed out first that the Act regulates practice of allopathic medicine, so Section 15(2)(b) requires that only those who are registered on State Medical Register alone can practise allopathic medicine and secondly, the prohibition is directed against every person who is not registered on any State Medical Register and all such persons are precluded from practising allopathic medicine. The punishment under Section 15(3) is in respect of contravention of any provision of sub-section (2).

However, the claim of those who have been notified by State Governments under clause (iii) of rule 2(ee) of the Drugs Rules and those who possess degrees in integrated courses to practice allopathic medicine is sought to be supported from the definition of the Indian Medicine in Section 2(e) of 1970 Act, referred to above, meaning the system of Indian medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb whether supplemented or not by such modern advances as the Central Council may declare by notification from time to time. Lot of emphasis is laid on the words underlined to show that they indicate modern scientific medicine as under integrated systems various branches of modern scientific medicine have been included in the syllabi. A degree holder in integrated courses is imparted not only the theoretical

knowledge of modern scientific medicine but also training thereunder, is the claim. We shall examine the notifications issued by the Central Council to ascertain the import of those words. In its resolution dated March 11, 1987, the Central Council elucidated the concept of "modern advances" as follows :

"This meeting of the Central Council hereby unanimously resolved that in Clause (e) of Sub-section 2(1) of 1970 Act of the IMCC Act, 'the modern advances', the drug has advanced made under the various branches of modern scientific system of medicine, clinical, non-clinical, biosciences, also technological innovations made from time to time and declare that the courses and curriculum conducted and recognised by the CCIM are supplemented by such modern advances." On October 30, 1996 a clarificatory notification was issued, which reads as under :

"As per provision under Section 2(1) of the Indian Medicine Central Council Act, 1970, hereby Central Council of Indian Medicine notifies that 'institutionally qualified practitioners of Indian system of medicine (Ayurveda, Siddha and Unani) are eligible to practise Indian system of medicine and modern medicine including Surgery, Gynecology and Obstetrics based on their training and teaching which are included in the syllabi of courses of ISM prescribed by Central Council of Indian Medicine after approval of the Government of India.

The meaning of the work 'modern medicine'(Advances) means advances made in various branches of Modern scientific medicine, clinical, non-clinical bio-sciences also technological innovations made from time to time and notify that the courses and curriculum conducted and recognised by the Central Council of Indian Medicine are supplemented by such modern advances." Based on those clarifications, the arguments proceed that persons who registered under the 1970 Act and have done integrated courses, are entitled to practise allopathic medicine. In our view, all that the definition of 'Indian Mecicine' and the clarifications issued by the Central Council enable such practitioners of Indian medicine is to make use of the modern advances in various sciences such as Radiology Report, (x-ray), complete blood picture report, lipids report, E.C.G., etc. for purposes of practising in their own system. However, if any State Act recognized the qualification of integrated course as sufficient qualification for registration in the State Medical Register of that State, the prohibition of Section 15(2)(b) will not be attracted.

A harmonious reading of Section 15 of 1956 Act and Section 17 of 1970 Act leads to the conclusion that there is no scope for a person enrolled on the State Register of Indian medicine or Central Register of Indian Medicine to practise modern scientific medicine in any of its branches unless that person is also enrolled on a State Medical Register within the meaning of 1956 Act.

The right to practise modern scientific medicine or Indian system of medicine cannot be based on the provisions of the Drugs Rules and declaration made thereunder by State Governments. Indeed, Ms. Indira Jaising has also submitted that the right to practise a system of medicine is derived from the Act under which a medical practitioner is registered. But she has strenuously argued that the right which the holders of degree in integrated courses of Indian medicine are claiming is to have their prescription of allopathic medicine, honored by a pharmacist or the chemist under the *Pharmacy Act* and the Drugs Act. This argument is too technical to be acceded to because prescribing a drug is a concomitant of the right to practise a system of medicine.

Therefore, in a broader sense the right to prescribe drugs of a system of medicine would be synonymous with the right to practise that system of medicine. In that sense, the right to prescribe allopathic drug cannot be wholly divorced from the claim to practice allopathic medicine.

The upshot of the above discussion is that Rule 2(ee)(iii) as effected from May 14, 1960 is valid and does not suffer from the vice of want of the legislative competence and the notifications issued by the State Governments thereunder are not ultra vires the said rule and are legal. However, after sub-section (2) in Section 15 of the 1956 Act occupied the field vide Central Act 24 of 1964 with effect from June 16, 1964, the benefit of the said rule and the notifications issued thereunder would be available only in those States where the privilege of such right to practise any system of medicine is conferred by the State Law under which practitioners of Indian Medicine are registered in the State, which is for the time being in force. The position with regard to Medical practitioners of Indian medicine holding degrees in integrated courses is on the same plain inasmuch as if any State Act recognizes their qualification as sufficient for registration in the State Medical register, the prohibition contained in Section 15(2)(b) of the 1956 Act will not apply.

In the result, civil appeals, special leave petitions and writ petitions are accordingly disposed of. There shall be no order as to costs.