

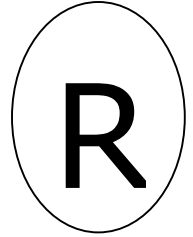
**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

DATED THIS THE 22ND DAY OF APRIL 2016

BEFORE

THE HON'BLE MR. JUSTICE H.G.RAMESH

W.P. No.67185/2011 (GM-RES)



BETWEEN:

S C NEKAR S/O CHANNABASAPPA NEKAR,
AGE: 34 YEARS, OCC: DOCTOR,
R/O: KALAS,
TQ: KUNDAGOL,
DIST: DHARWAD.

... PETITIONER

(BY SRI R H ANGADI & SRI HARISH S NAYAK, ADVOCATES)

AND:

1. THE STATE OF KARNATAKA,
DEPARTMENT OF HEALTH &
FAMILY WELFARE, VIDHANSOUDHA,
BANGALORE - 560 001
R/BY ITS SECRETARY

2. AYURVEDIC & UNANI PRACTITIONERS BOARD,
DHANAVANTHRI ROAD,
BANGALORE - 560 009
R/BY ITS REGISTRAR.

3. DISTRICT HEALTH AND
FAMILY WELFARE,
ZILLA PANCHAYAT,
DHARWAD
R/BY ITS OFFICER.

... RESPONDENTS

(BY SRI RAVI V HOSAMANI, AGA FOR R-1 & R-3;
SRI RAVI V HOSAMANI, STANDING COUNSEL FOR R-2)

THIS WP FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE PROVISO TO SECTION 3 OF THE KARNATAKA PRIVATE MEDICAL ESTABLISHMENT ACT OF 2007, VIDE ANNEXURE-A AS UNCONSTITUTIONAL AND QUASH THE ORDER DATED 19.09.2011 PASSED BY THE SECOND RESPONDENT VIDE ANNEXURE-B.

THIS WP COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

H.G.RAMESH, J. (Oral):

1. In this writ petition, the petitioner is challenging the notice dated 19.9.2011 (Annexure-B) issued by respondent No.3 wherein the petitioner has been held to be not qualified to practice medicine, and hence, he is directed to close his medical clinic.
2. The petitioner has also challenged the constitutional validity of the *proviso* to Section 3 of *the Karnataka Private Medical Establishments Act, 2007*.
3. This writ petition is almost similar to W.P.Nos.67132-67133/2011 which is dismissed today by this Court.

4. Learned counsel appearing for the petitioner submitted that the *proviso* to Section 3 of *the Karnataka Private Medical Establishments Act* is unconstitutional as it is contrary to Section 17 of *the Indian Medicine Central Council Act, 1970*. Therefore, the impugned notice is unsustainable in law.

5. In Karnataka, medical profession is regulated by *the Karnataka Ayurvedic, Naturopathy, Siddha, Unani and Yoga Practitioners' Registration and Medical Practitioners' Miscellaneous Provisions Act, 1961* ('the Act'). Section 34(1) of the Act requires to be noticed:

"34. Medical Practitioners not registered under this Act or under certain laws not to practise, etc.—(1) No person other than (i) a practitioner registered under Chapter II of this Act or (ii) a practitioner registered under the Karnataka Medical Registration Act, 1961 or the Karnataka Homeopathic Practitioners Act, 1961 or a practitioner whose name is for the time being borne on the Indian Medical Register maintained under the Indian Medical Council Act, 1956 or (iii) a person whose name is entered in the list mentioned in section 18, shall practise or hold himself out, whether directly or by implication, as practising for personal gain any system of medicine, surgery or midwifery.

A plain reading of Section 34(1) of the Act extracted above shows that it prohibits all persons, not falling within

the three categories referred to therein, from practising any system of medicine for personal gain. It is relevant to state that Medical profession is a matter enumerated in list III (concurrent list) in the Seventh Schedule of the Constitution. As the Act has received the assent of the President on 4 March 1962, the Act will prevail in the State, as laid down in Article 254 of the Constitution, over any law made by Parliament.

6. On being asked by this Court, learned counsel for the petitioner submitted that the petitioner does not fall under any of the three categories referred to in sub-section (1) of Section 34 of the Act. If that be so, the petitioner is prohibited under Section 34(1) of the Act from practising any system of medicine in the State of Karnataka. Hence, the impugned notice does not warrant interference. The certificates produced as annexures to the writ petition are of no avail to the petitioner in view of the mandatory provision of law extracted above. In view of the above, it is unnecessary to examine the constitutional validity of the *proviso* to Section 3 of the *Karnataka Private Medical*

Establishments Act. For the foregoing reasons, the writ petition is liable to be dismissed and is accordingly dismissed.

Petition dismissed.

**Sd/-
JUDGE**

hkh.