

Court No.3

Case :- WRIT - C No. - 28379 of 2022

Petitioner :- Paramedical Council Of India

Respondent :- Union Of India And Another

Counsel for Petitioner :- Abhay Raj Yadav

Counsel for Respondent :- A.S.G.I.,Anurag Sharma

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Jayant Banerji,J.

1. Heard Shri Abhay Raj Yadav, learned counsel for the petitioner and Shri Anurag Sharma, learned Central Government Standing Counsel.

2. The petitioner has filed the present writ petition for a direction to the respondent to permit the petitioner to function as Paramedical Council to grant recognition and to register the Institutions, imparting education in the field of Paramedical Courses until the formation of any Regulatory Body for Paramedicals by the respondents and not to interfere in peaceful functioning of the petitioner in imparting the paramedical education and training.

3. A perusal of this writ petition reveals that the petitioner is infact seeking legitimacy to exercise a function that is within the domain of the legislative power of the Parliament exerciseable under the Union List of the Seventh Schedule of the Constitution of India.

4. The learned Central Government Standing Counsel has placed before us a copy of the Gazette notification of the National Commission for Allied and Healthcare Professions Act, 2021¹. Sections 2(d) and 2(j) of the Act define “allied health professional” and “healthcare professional” respectively as follows:-

¹ Act

“(d) "allied health professional" includes an associate, technician or technologist who is trained to perform any technical and practical task to support diagnosis and treatment of illness, disease, injury or impairment, and to support implementation of any healthcare treatment and referral plan recommended by a medical, nursing or any other healthcare professional, and who has obtained any qualification of diploma or degree under this Act, the duration of which shall not be less than two thousand hours spread over a period of two years to four years divided into specific semesters.

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2(j) "healthcare professional" includes a scientist, therapist or other professional who studies, advises, researches, supervises or provides preventive, curative, rehabilitative, therapeutic or promotional health services and who has obtained any qualification of degree under this Act, the duration of which shall not be less than three thousand six hundred hours spread over a period of three years to six years divided into specific semesters.”

5. Chapter II of the Act provides for constitution of a Commission called the National Commission for Allied and Healthcare Profession for exercising such powers and discharging such duties as may be laid down under the Act. Under Section 10 of the Act, the Commission is empowered to constitute Professional Council for every recognised category of the allied and healthcare professionals specified in the Schedule to the Act. Under Section 11, the duty of the Commission is to take all such steps as it may think fit for ensuring coordinated and integrated development of education and maintenance of the standards of delivery of services under the Act and for purposes of performing its functions, the Commission may frame policies and standards for the governance of allied and healthcare related education and professional services; regulate the professional conduct, code of ethics and etiquette to be observed by the allied and healthcare professionals; to create and maintain an up-to-date online and live Central Register; provide scope of practice of each profession; provide basic standards of education, courses, curricula, etc.; provide for qualification, uniform entry examination

with common counselling for admission into institutions at the diploma, undergraduate, postgraduate and doctoral level; provide for exit or licensing examinations for professional practice or entrance into postgraduate or doctoral level and National Teachers Eligibility Test for academicians, etc. Under Section 12 of the Act, the Central Government is empowered to constitute an Advisory Council to advise the Commission on the issues relating to allied and healthcare professionals.

6. Chapter III of the Act deals with State Allied and Healthcare Council. Section 22 of the Act authorises the State Government to constitute a State Council for exercising such powers and discharging such duties as may be laid down under the Act. Section 29 empowers the State Council to constitute the specified Autonomous Board for regulating the allied and healthcare professionals.

7. Sections 29, 30, 31 and 32 of the Act read as follows:-

“29. (1) The State Council shall, by notification, constitute the following Autonomous Boards for regulating the allied and healthcare professionals, namely,—

- (a) Under-graduate Allied and Healthcare Education Board,
- (b) Post-graduate Allied and Healthcare Education Board,
- (c) Allied and Healthcare Professions Assessment and Rating Board, and
- (d) Allied and Healthcare Professions Ethics and Registration Board.

(2) The Autonomous Boards constituted under subsection (1) shall consist of a president and such number of members from each recognised category as may be specified by the regulations and shall be appointed by the State Government.

(3) The Under-graduate Allied and Healthcare Education Board and Post-graduate Allied and Healthcare Education Board shall determine standards of allied and healthcare education at the graduate, postgraduate level and super-speciality level, develop competency based on dynamic curriculum content, reviewing institutional standards against norms, faculty development, approval of courses of

recognised qualification and other functions as entrusted by the State Council for Under Graduate Education and Post Graduate Education.

(4) The Allied and Healthcare Profession Assessment and Rating Board shall determine the procedure for the assessment and rating of allied and healthcare institutions by providing for inspection of institutions, grant permission for establishment of new allied and healthcare institutions and seat capacity, empanelling assessors, imposing warnings or fines, recommend for withdrawal of recognition of institutions and any other function as entrusted by the State Council to ensure maintenance of minimum essential standards.

(5) The Allied and Healthcare Profession Ethics and Registration Board shall maintain online and live State Registers of all licensed allied and healthcare practitioners in the State, regulate the professional conduct and promotion of ethics and undertake any other function as entrusted by the State Council.

(6) The Under-graduate Allied and Healthcare education or Post-graduate Allied and Healthcare education or Allied and Healthcare Professions Assessment and Rating or Allied and Healthcare Professions Ethics and Registration shall perform such other functions as may be specified by regulations.

30. It shall be the duty of the State Council to take all such steps as it may think fit for ensuring the co-ordinated and integrated development of education and maintenance of the standards of delivery of services under this Act and, for the purposes of performing its functions, the State Council shall-

(a) enter the name of the recognised categories, enforce the professional conduct, code of ethics and etiquette to be observed by the allied and healthcare professionals in the State and take disciplinary action, including the removal of a professionals' name from the State Register;

(b) ensure minimum standards of education, courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment, examination, training, research, continuing professional education;

(c) ensure uniform entry examination with common counselling for admission into the allied and

healthcare institutions at the diploma, undergraduate, postgraduate and doctoral level under this Act;

(d) ensure uniform exit or licensing examination for the allied and healthcare professionals under this Act;

(e) inspect allied and healthcare institutions and register allied and healthcare professionals in the State;

(f) ensure compliance of all the directives issued by the Commission;

(g) provide minimum standards framework for machineries, materials and services;

(h) approve or recognise courses and intake capacity for courses;

(i) impose fine upon institutions in order to maintain standards; and

(j) perform such other functions as may be entrusted to it by the State Government for implementation of the provisions of this Act.

31. The State Council may constitute as many professional Advisory Boards as may be necessary to examine the issues relating to one or more recognised categories and to recommend the State Council and also to undertake any other activity as may be authorised by the State Council.

32. (1) The State Council shall maintain online and live State Register of persons in separate parts for each of the recognised categories to be known as the State Allied and Healthcare Professionals' Register which shall contain information including the name of person and qualifications relating to any of their respective recognised categories in such manner as may be specified by regulations.

(2) The State Register shall contain the details of academic qualification institutions, training, skill and competencies of Allied and Healthcare Professionals related to their profession in the manner as may be specified by regulations.

(3) The State Register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872, and may be proved by a certified copy provided by the State Council.”

8. Chapter V of the Act deals with establishment of new allied and healthcare institutions. Section 40 reads as follows:-

“40. (1) Notwithstanding anything contained in this Act or any other law for the time being in force, on and from the date of commencement of this Act-

(a) no person shall establish an allied and healthcare institution; or

(b) no allied and healthcare institution shall—

(i) open a new or higher course of study or training (including post-graduate course of study or training) which would enable students of each course of study or training to qualify himself for the award of any recognised allied and healthcare qualification; or

(ii) increase its admission capacity in any course of study or training (including post-graduate course of study or training); or

(iii) admit a new batch of students in any unrecognised course of study or training (including post-graduate course of study or training),

except with the previous permission of the State Council obtained in accordance with the provisions of this Act:

Provided that the allied and healthcare qualification granted to a person in respect of a new or higher course of study or new batch without previous permission of the State Council shall not be a recognised allied and healthcare qualification for the purposes of this Act:

Provided further that where there is no State Council constituted by a State Government, the Commission shall give the previous permission for the purposes of this section.

(2)(a) Every person or allied and healthcare institution shall, for the purpose of obtaining permission under sub-section (1), submit to the State Council a scheme in accordance with the provisions of clause (b).

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed by the Central Government.

(3) On receipt of a scheme under sub-section (2), the State Council may obtain such other particulars as may be considered necessary by it from the person or the allied and healthcare institution concerned, and thereafter, it may,—

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or allied and healthcare institution concerned for making a written

representation and it shall be open to such person or allied and healthcare institution to rectify the defects, if any, specified by the State Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (5).

(4) The State Council may, after considering the scheme and after obtaining, where necessary, such other particulars under sub-section (2) as may be considered necessary by it from the person or allied and healthcare institution concerned, and having regard to the factors referred to in sub-section (5), either approve with such conditions, if any, as it may consider necessary or disapprove the scheme and any such approval shall constitute as a permission under sub-section (1):

Provided that no such scheme shall be disapproved by the State Council except after giving the person or allied and healthcare institution concerned a reasonable opportunity of being heard:

Provided further that nothing in this sub-section shall prevent any person or allied and healthcare institution whose scheme has not been approved by the State Council to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme had been submitted for the first time under sub-section (2).

(5) The State Council shall, while passing an order under sub-section (4), have due regard to the following factors, namely:—

(a) whether the proposed allied and healthcare institution or the existing allied and healthcare institution seeking to open a new or higher course of study or training, would be in a position to offer the basic standards of education as specified by regulations;

(b) whether the person seeking to establish an allied and healthcare institution or the existing allied and healthcare institution seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training, hospital and other facilities to ensure proper functioning of the allied and healthcare institution or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided as may be specified in the scheme;

(d) whether adequate facilities, having regard to the number of students likely to attend such allied and healthcare institution or course of study or training or as a result of the increased admission capacity, have been provided or would be provided as may be specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such allied and healthcare institution or the course of study or training by the persons having the recognised allied and healthcare qualifications;

(f) the requirement of manpower in the allied and healthcare institution; and

(g) any other factors as may be specified by regulation.

(6) Where the State Council passes an order under subsection (4), a copy of the order shall be communicated to the person or allied and healthcare institution as the case may be.

Explanation.—For the purposes of this section,—

(a) "person" includes any University, institution or a trust, but does not include the Central Government or State Government;

(b) "admission capacity", in relation to any course of study or training (including post-graduate course of study or training) in an allied and healthcare institution, means the maximum number of students as may be decided by the State Council from time to time for being admitted to such course of study or training."

9. A perusal of the entire Act reveals that it is a comprehensive enactment dealing with the aspect of education, registration and licencing of allied and healthcare professional, regulation of allied and healthcare institutions and other related matters.

10. Given the mandate of the Act in general and of Section 40 of the Act in particular, the petitioner cannot be permitted to grant recognition to institutions imparting education and training or register any such institution, except in accordance with, and to the extent

permissible under the scheme and terms of the Act. No mandamus, as sought for, can be issued.

11. For all the reasons stated above, the writ petition is **dismissed**.

Date :02.02.2023

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