PETITIONER:
A. T. ZAMBRE AND OTHERS

Vs.

RESPONDENT:
KARTAR KRISHNA SHASHTRI

DATE OF JUDGMENT17/12/1980

BENCH:
KOSHAL, A.D.
BENCH:
KOSHAL, A.D.
ISLAM, BAHARUL (J)

CITATION:
1981 AIR 796 1981 SCR (2) 398
1981 SCC (1) 561

ACT:
Constitution of India 1950, Art. 14 & The Maharashtra Medical Practitioners Act, 1961, S. 17(5)-Whether unconstitutional.

HEADNOTE:
The Maharashtra Medical Practitioners Act 1961, contains provisions for registration and enlistment of medical practitioners. Clause (ii) of sub-section (5) of section 17 of the Act provides that any person not being a person qualified for registration under sub-sections (3) or (4) who proves to the satisfaction of the Committee appointed under sub-section (6), "that he was on the 4th day of November 1941 regularly practising the Ayurvedic or the Unani System of Medicine in the Bombay area of the State, but his name was not entered in the register maintained under the Bombay Medical Practitioners Act, 1938" shall be entitled to have his name entered in the register on making an application and on payment of the prescribed fee.

The respondent whose name was listed by the Board of Indian Medicine, Uttar Pradesh in the register of Vaids and Hakims practised as a Vaid and as an Ayurvedic Doctor in Agra and Bhopal respectively. He migrated to Bombay in 1962 where he started practice as an Ayurvedic Doctor. He applied for registration as a medical practitioner to the Committee of the Medical Board of Unani system of Medicine under sub-section (5) of section 17 of the Act. His application was rejected, and his appeal filed to the Board was also dismissed.

The High Court, however, allowed the respondent's writ petition, relying on its earlier decision in Rukmani Hoondraj Hingorani v. The Appellate Authority under the Maharashtra Medical Practitioner Act, 1961 (1969) 71 Bom. L.R. 71 (77), held section 17(5) of the Act as unconstitutional and set aside the orders passed by the Board.

Dismissing the appeal to this Court,

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HELD: 1. In Rukmani Hoondraj Hingorani v. The Appellate Authority under the Maharashtra Medical Practitioners Act, 1961 (1969) 71 Bom. L.R. 71(77) the validity of section 18(2)(b)(ii) fell for consideration and was rightly held to

be unconstitutional as it offends the provisions of Article 14. It was observed in that case that the provision, by restricting the right of enlistment to those medical practitioners 'who have been regularly practising on 4th November, 1951 in the Bombay area of the State' had no rational nexus with the object of the Legislature which was to allow medical practice by those less qualified persons who were too old to choose alternative means of livelihood, and that while it was clearly open to the Legislature to provide that a person must have been practising for a certain number of years, or from before a particular date, in order that his name may be included in the list, no distinction on the basis of the area in which he had been practising could be made. [400C-H]
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2. The provisions of section 18(2)(b)(ii) being in pari materia with subsection (5) of section 17, the observations made in the above case apply also to this sub-section. This sub-section is, therefore, violative of Article 14 of the Constitution. [401G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1572 of 1970.

From the Judgment and Order dated 8-11-1968 of the Bombay High Court in S.C.A. No. 2087/68.

M. C. Bhandare, C. K. Sucharita and M. N. Shroff for the Appellant.

Nemo for the Respondent.

The Judgment of the Court was delivered by

KOSHAL J., This is an appeal by special leave against the judgment dated November 8, 1968 of a Division Bench of the High Court of Bombay allowing a petition under articles 226 and 227 of the Constitution of India and declaring that sub-s. (5) of s. 17 of the Maharashtra Medical Practitioners Act, 1961 (hereinafter referred to as the Act) is ultra vires of article 14 of the Constitution of India.

The facts are not in dispute and may be shortly stated. The respondent hails from Uttar Pradesh. In 1940 he obtained the degree of "Ayurved Shastri" from the All India Adarsh Vidwat Parishad, Kanpur. On November 12, 1940 his name was listed by the Board of Indian Medicine, Uttar Pradesh, in the register of Vaids and Hakims. He practised as a Vaid in Agra thereafter upto 1955 when he migrated to Bhopal where he was registered as an Ayurvedic Doctor by the Medical Council of the Government of Bhopal under the Bhopal Medical Practitioners Registration Act, 1935. He migrated to Bombay in 1962 and started practising there as an Ayurvedic Doctor. However, in the meantime, i.e., on November 23, 1961, the Act came into force, except for Chapter VI thereof which came into operation on November 1, 1966. The respondent's application for registration as a medical practitioner made to the Committee of the Medical Board of Unani System of Medicine under sub-s. (5) of s. 17 of the Act (although none of the clauses of that sub-section had anything to do with it) was rejected and his appeal filed to the Board was also dismissed on September 30, 1964.

Clause (ii) of the said sub-s. (5) with which we are concerned provides that any person not being a person qualified for registration under sub-ss. (3) or (4) who proves to the satisfaction of the Committee appointed under sub-s. (6) "that he was on the 4th day of November 1941 regularly practising the Ayurvedic or the Unani System of

Medicine in the Bombay area of the State, but his name was not entered in the register maintained under the Bombay Medical
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Practitioners Act, 1938" shall be entitled to have his name entered in the register on making an application on the prescribed form, on payment of a fee of Rs. 10/- and production of such documents as may be prescribed by the rules. The expression "Bombay area of the State of Maharashtra" is defined in sub-s. (6) of s. 3 of the Bombay General Clauses Act to mean "the area of the State of Maharashtra excluding the Vidarbha region and the Hyderabad area of that State."

A contention was raised before the High Court on the strength of Rukmani Hoondraj Hingorani v. The Appellate Authority under the Maharashtra Medical Practitioners Act, 1961 that sub-s. (5) of s. 17 of the Act fell foul of article 14 of the Constitution, and that contention was accepted. We may usefully refer to the following observations made in the decision just above cited:

> "Confining our attention, however, to medical practitioners practising in the Bombay area of the State, we find it difficult to appreciate why the right of enlistment should have been restricted to those who were regularly practising on 4th November 1951, 'in the Bombay area of the State'. Since the object of the Legislature was to allow medical practice by those less qualified persons who were too old to choose alternative means of livelihood, it was clearly open to the Legislature to provide that a person must have been practising for a certain number of years, or from before a particular date, in order that his name may be included in the list. It was thus open to the Legislature to provide that, out of unregistered and unlisted medical practitioners who were practising in the Bombay area of the State, only those would be entitled to have their names included in the list who were practising regularly from before the 4th of November, 1951. It is, however, not possible to find any rational basis for the provision that medical practitioners in the Bombay area of the State, in order to be entitled to enlistment, must not only have been practising regularly from 4th November, 1951, but must have been practising on that day 'in the Bombay area of the State'. The provision that medical practitioners must have been practising on 4th November, 1951 in the Bombay area of the State has no rational nexus with the object of the Legislature which was to ensure that medical practitioners, who were not fully qualified but who were too old to choose alternative means of livelihood, should not be deprived of their practice.
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> In order to illustrate the discriminatory nature of the provision contained in s. 18(2)(b)(ii), we shall take imaginary instances of five persons who were all practising in the Bombay area of the State at the time of their applications under s. 18 (i.e., on or before 31st March, 1965) and who were not already enlisted and were not entitled to registration under the Act. Let us suppose that one of them, A, was practising continuously in Bombay City from 1950 to 1963, when he applied under s. 18 of the Act. Since on 4th November, 1951 he was practising regularly 'in the Bombay area of the State', he is clearly entitled to have his name included in the list. Let us take another person B who

practised in Poona from 1950 to 1954 and in Bombay City from 1954 to 1963 when he applied under s. 18. He is also entitled to enlistment because Poona falls in the Bombay area of the State. We may then take the instance of C who practised in Nagpur from 1950 to 1954 and in Bombay City from 1954 to 1963. He would not be entitled to have his name included in the list, because on 4th November, 1951 he was regularly practising in Nagpur which, though situated in Maharashtra, is not included in the Bombay area of the State. We will next take the instance of D who practised in Baroda, then a part of the Bombay State, from 1950 to 1954 and thereafter in Bombay City from 1954 to 1963. He is also not entitled to enlistment, since Baroda in out side the State of Maharashtra. Similar would be the position of another person E who practised in Bhopal from 1950 to 1954 and then in Bombay City from 1954 to 1963. No rational explanation can be given of why A and B should receive the said concession from the Legislature and should be able to continue their practice and why C, D and E should not receive the concession and should be deprived of their practice."

We find ourselves in complete agreement with these observations which were made in relation to sub-clause (ii) of clause (b) of sub-s. (2) of s. 18 of the Act. The provisions of that sub-clause being in pari materia with sub-s. (5) of s. 17 of the Act, they apply fully to that sub-section which must therefor be held to be violative of article 14 of the Constitution. Accordingly we have no hesitation in upholding the impugned judgment and dismiss this appeal, but with no order as to costs as the respondent has not appeared before us to contest it.

N.V.K. Appeal dismissed.

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