

DR. KIRUSHNAR SUPPAIAH
vs.
SRI LANKA MEDICAL COUNCIL

COURT OF APPEAL.
SRISKANDARAJAH, J.
CA 251/2004.
FEBRUARY 15, 2006.

Writ of Certiorari - Medical Ordinance - Section 20 (1)(a), section 20 (4) - Section 26, section 29, section 41, section 33, section 38, section 41 amended by Act, No. 30 of 1987 - section 74A - Registration of practitioners entitled to practice medicine and surgery and registration of practitioners qualified to practice medicine and surgery - Difference - Refusal to register the name as a Medical Practitioner.

The petitioner sought a Writ of Certiorari to quash the decision of the respondents not to include the petitioner's name as a Medical Practitioner in the Medical Register in terms of section 20 (1) (a)-(b) or section 26, on the basis that, he was registered as a Medical Practitioner in 1983 under the Laws that prevailed at that time. The respondents contended that the petitioner was registered as a person entitled to practice Medicine and surgery under section 41 and that the petitioner was at no time registered under section 20(1) (a).

HELD:

- (1) The Scheme of the Medical Ordinance has laid down a clear distinction between the Medical Practitioners **qualified** to practice Medicine and persons **entitled** to practice Medicine.
- (2) Under Section 20 (1) (a) the Registrar is required to keep and maintain a register for Medical Practitioners **qualified** to practice Medicine and Surgery and or separate register under Section 41 to register practitioners who are **entitled** to practice Medicine and Surgery. The qualification for the registration in the register maintained under section 20(1) and Section 41 are different.
- (3) By the Medical Amendment Act No. 50 of 1987 the Registrar is required to keep and maintain another register under section 20(1)(bb) containing the names of persons **entitled** to practice Medicine and Surgery under section 41.
- (4) The petitioner's claim that he was a Registered Medical Practitioner in 1983 has not been substantiated. He was at no time registered under Section 20(1)(a), but was only registered as a person **entitled** to practice Medicine and Surgery under section 41. The petitioner is not entitled to claim that his name should be included in the Register maintained under section 20(1)(a), as the register contains Medical Practitioners registered under section 29 - the petitioner falls within the category of the exception provided under section 38(b).

APPLICATION for a Writ of Certiorari.

Romesh de Silva PC with Geethaka Gunawardane for petitioner.

Shibly Aziz PC with Ms Senany Dayaratne and Rohan Deshapriya for 1st and 2nd respondents.

Cur.adv.vult.

April 25, 2006.

SRISKANDARAJAH, J.

The Petitioner in this applicatoin has sought a writ of certiorari to quash the decision of he Respondents not to include the Petitioner's name as a Medical Parctitioner in the registers maintained in terms of section 20(1)(a) and/or section 26 of the Medical Ordinance. The Petitioner also has sought a writ of mandamus directing the Respondents to publish a copy of the Medical Register kept under and in terms of sections 20(1)(a) and/or 26 with the Petitioner's name included in it and for a writ of prohibition preventing the Respondents from publishing any register of Medical Practitioners in the Gazette in terms of section 29 and/or any other section of the Medical Ordinance.

The Petitioner submitted that he was registered as a Medical Practitioner on the 12th September, 1983 under the laws that prevailed at that time. Since then a register containing his name was never published in the Government Gazette although there have been several publications of a register of Medical Practitioners in the year 1992, 2002 and 2003. The Petitioner further submitted that the Petitioner's registration under section 20(1)(a) of the Medical Ordinance made on 12th September 1983 has not been deleted and/or erased and thus his registration in the register maintained in terms of section 20(1)(a) of the Ordinance still continues.

The 1st and 2nd Respondents submitted that the Petitioner was granted registration No. 1390 and was registered on 12.09.1983 as a person entitled to practice medicine and surgery under section 41 of the Medical Ordinance and they further submitted that the Petitioner was at no time registered under section 20(1)(a) of the Medical Ordinance.

The scheme of the Medical Ordinance provides in Part (V) Medical Practitioners, Part (VI) Dentist, Part (VII) Midwives, Part (VIII) Pharmacists, Part (VIII A) Para-Medical Assistants and Part (IX) Nurses. The above

categories of professionals are required by the Medical Ordinance to be registered to practice the respective profession.

The Registrar who is appointed by the Medical Council is required by the Medical Ordinance to maintain registers provided in section 20(1) of the said Ordinance and enter in the appropriate register the name of every person who proves his claim to be registered as provided by section 20(4). An applicant for registration shall deliver to the registrar as provided by section 20(6), the appropriate declarations required by the Schedules which shall be declared before a Justice of the Peace or a Commissioner for Oaths, and such other evidence of his right to be registered as the register may require. The power of the Medical Council to erase the name of any person from the register is provided under section 25.

The registration as a medical practitioner is provided under section 29(1) of the said Ordinance and section 33 provides the grounds under which the name of a medical practitioner may be erased from the register. Section 38 prohibits a person to practice medicine or surgery other than a medical practitioner. This section provides :

38. No person, not being a medical practitioner, shall-

- (a) take or use any name, title, or addition implying a qualification to practice medicine or surgery by modern scientific methods, or implying or tending to the belief that he is a medical practitioner registered under this Ordinance, or by any act or omission intentionally cause or permit any person to believe that he is a registered medical practitioner, and to act upon such belief ; or
- (b) except as mentioned in section 41, practice for gain, or profess to practice, or publish his name as practising medicine or surgery.

An exception is provided under section 38(b) for a person to practise medicine other than a medical practitioner if that person is a Government apothecary, estate apothecary or estate dispenser as provided in section 41(1). This section has made it lawful for these categories of persons to practice medicine provided they are either employed in the public service as an apothecary and for the time being in charge of a dispensary or

hospital or registered under sub-section (2), (2A), (2B), (2C) of section 41 respectively. The Medical Ordinance under the above sub-sections requires the registrar to maintain separate registers under the relevant subsection to register the persons under the relevant sub-section and erase there from the name of any person ordered to be erased by the Medical Council under sub-section (3) of section 41.

Section 41(3) provides that where it is shown to the satisfaction of the Medical Council that any person being an apothecary entitled to practise medicine and surgery under subsection (1)(b) or under subsection (1)(c) or under sub-section (1)(cc) or under subsection (1)(ccc) or any estate apothecary entitled to practice medicine and surgery under sub-section (1) (cc) or any estate dispenser entitled to practice medicine and surgery under sub-section (1)(e) has been guilty of inefficiency or negligence in the treatment of a patient or has been guilty of conduct which shows him to be unfit to practice medicine and surgery, the Medical Council may make an order that such person be suspended from the privileges and immunities conferred on him by this section either permanently or during the period specified in the order, and where circumstances of the case so require an order that the name of any person be erased from the register of apothecaries maintained, as the case may be, under sub-section (2) or sub-section (2A) or sub-section (2B) or sub-section (2BB) or an order that the name of any person be erased from the register of estate dispensers maintained under sub-section (2C).

(4) Every order under sub-section (3) shall be published in the Gazette.

The scheme of the Medical Ordinance has laid down a clear distinction between the medical practitioners qualified to practice medicine and persons entitled to practice medicine. It is clear that under section 20(1)(a) the registrar is required to keep and maintain a register for medical practitioners qualified to practice medicine and surgery in Sri Lanka and the registrar is also required to keep and maintain separate registers under section 41 sub-section (2), (2A), (2B) and (2C) to register any Government apothecary, any estate apothecary, any Government apothecary (with the required experience and qualification) and any estate dispenser respectively as being entitled to practice medicine and surgery. The qualification for the registration in the registers maintained under section 20(1)(a) and under

section 41 sub-section (2), (2A), (2B), (2C) are different. The grounds for the medical practitioner's name to be erased from the register (section 33) and the grounds for the names of categories of persons entitled to practice medicine to be erased from the respective registers (section 41(3)) are different.

By the Medical (Amendment) Act, No. 30 of 1987 the aforesaid distinction between the medical practitioners qualified to practice medicine and surgery and the persons entitled to practice medicine and surgery is clearly laid down. By this amendment Act, the registrar is required to keep and maintain another register under section 20(1)(bb) containing the names of persons entitled to practise medicine and surgery under sub-section 2, 2A, 2B and 2C of section 41. By this amendment the names registered under the aforesaid four separate registers will be kept and maintained in one register as provided under section 20(1)(bb).

This amendment Act in section 74A provides :

"Unless the context otherwise requires every reference to apothecary in this Ordinance and in any other written law shall be deemed to be a reference to assistant medical practitioner"

Even though the Petitioner claims that he was registered as a medical practitioner on 12th September, 1983 under section 20(1)(a) of the Medical Ordinance he has not submitted any evidence to substantiate his claim. The Respondents have categorically denied this claim and stated that the Petitioner was at no time registered under section 20(1)(a) of the Medical Ordinance but was only registered as a person entitled to practice Medicine and Surgery under section 41 of the said Ordinance.

The petitioner submitted that the Respondents are obliged under section 27 of the said Ordinance after 1st January of each year to cause a copy of each register as it exists on such first day of January to be published in the Gazette. The Petitioner further submitted that since the petitioner's registration the Respondents have published in the Gazette registers of Medical Practitioners only in the year 1992 and thereafter 2002 and 2003 and therefore the Respondents are in breach of their statutory duty to publish the medical register every year. The Respondents have explained the

difficulty in publishing the medical register every year. They have submitted that due to many registers maintained by the Registrar and due to each register containing a vast number of names, it has been practically impossible, due to the work involved for the Government Printer to ensure an annual publication of each register as required by section 27 of the aforesaid Ordinance.

The Petitioner submitted that the Respondents are in breach of their duties in terms of the said Ordinance by the failure to include the Petitioner's name in the register of Medical Practitioners which was published in the year 1992 (P3). Therefore he prayed that the Respondent's decision not to include the Petitioner's name in the said register maintained under and in terms of Section 20(1)(a) and/or 26 and published in terms of section 27 is *ultra vires*, arbitrary, wrongful and/or unlawful and be quashed.

The Petitioner's entitlement to have his name entered in the relevant register has already been discussed above and the Petitioner under the relevant provisions could have his name registered only under section 41(2) and it would have appeared in the said relevant register kept and maintained under section 41(2) before the Medical (Amendment) Act, No. 30 of 1987 was brought into operation. Thereafter his name should have been included in the register maintained under section 20(1)(bb) but the petitioner is not entitled to claim that his name should be included in the register maintained under section 20(1)(a) as this register contains the Medical Practitioners registered under section 29 of the said Ordinance and the Petitioner falls within the category of the exception provided under section 38(b) of Part V. Under these circumstances the Petitioner cannot seek to quash a decision (if there is one) not to include the Petitioner's name in the said register maintained under and in terms of section 20(1)(a) and he is also not entitled to seek a writ of mandamus directing the Respondent to publish the Petitioner's name in the Medical Register kept in terms of section 20(1)(a) and section 26 of the said Ordinance. Therefore this Court dismisses this application without costs.

Application dismissed.