

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4579/2005

PETITIONER: Indian Medical Association
through its President Dr. Kishor Taori,
Having office at IMA House, North Ambazari
Road, Nagpur.

...VERSUS...

RESPONDENTS :

1. State of Maharashtra, through its Secretary,
Industries and Labour Department,
Mantralaya, Mumbai – 32.
2. The Commissioner of Labour
State of Maharashtra, Mumbai.
3. The Deputy Commissioner of Labour
State of Maharashtra, Nagpur Division,
240, Bhosla Chambers, Civil Lines, Nagpur.

Shri B.G. Kulkarni, Advocate for petitioner
Shri A.V. Palshikar, AGP for respondents

**CORAM : SMT. VASANTI A NAIK, AND
KUM. INDIRA JAIN, JJ.**

DATE : 21.10.2016

ORAL JUDGMENT (PER : SMT. VASANTI A NAIK, J.)

By this writ petition, filed by the Indian Medical Association, the petitioner has sought a declaration that the establishments of individual medical practitioners and the medical practitioners working in partnership are not commercial establishments within the meaning of

Section 2 (4) of the Bombay Shops and Establishments Act, 1948. By amending the writ petition, the petitioner - Association has sought a declaration that the inclusion of the term 'medical practitioners' in the definition of 'commercial establishments' in Section 2 (4) of the Act by amendment is violative of the provisions of Article 14 of the Constitution of India.

Shri Kulkarni, the learned Counsel for the petitioner - Association states that the Hon'ble Supreme Court has held as early as in the year 1969 in the judgment, reported in **1969 Mh.L.J. 391** that the professional establishments of Doctors do not fall within the ambit of the definition of 'commercial establishments' under the Bombay Shops and Establishments Act. It is stated that the judgment of the Hon'ble Supreme Court is followed by this Court in the judgment, reported in **1981 Mh.L.J. 635**. It is stated that this Court has held in the order, dated 12.6.2014 in Criminal Writ Petition No.1731/2002 that the amendment, that is, sought to be challenged by the petitioner – Association in this case is *ultra vires* and is liable to be struck down. It is stated that by the order, dated 12.6.2014, Criminal Writ Petition No.1731/2002 was allowed after striking down the amendment, that is, sought to be challenged. It is stated that a similar view is expressed by this Court time and again and the prayers made by the petitioner need to be granted.

Shri Palshikar, the learned Assistant Government Pleader appearing for the respondents does not dispute the position of law as laid down by the Hon'ble Supreme Court and this Court in the aforesaid judgments. It is admitted that the questions involved in this writ petition stand answered in favour of the petitioner – Association, in view of the aforesaid judgments.

Hence, for the reasons recorded in the judgments, reported in reported in **1969 Mh.L.J. 391** and **1981 Mh.L.J. 635** and the unreported order, dated 12.6.2014 in Criminal Writ Petition No.1731/2002, we allow this writ petition. In fact, we find that the declarations, that are sought by the petitioner - Association already stand granted by the judgments, that are rendered by the Hon'ble Supreme Court and this Court.

Hence, we make the Rule absolute in terms of prayer clauses (i) and (i-a). No order as to costs.

JUDGE

JUDGE

Wadkar