
(2015) 03 PAT CK 0113

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 20894 of 2014

Aiman Kamal

APPELLANT

Vs

Medical Council of India

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Citation : (2015) 2 BBCJ 512

Hon'ble Judges : Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : Mr. Ajay Kumar Sinha, Mr. S.C. Jha and Mr. Sachindra Kumar Tiwary, Advocates, for the Petitioner; Mr. Kumar Brijnandan, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Tripathi, J. (Oral) - Annexure- 5 is the communication dated 23.8.2011 made by the Medical Council of India to the petitioner by virtue of which they have refused to grant Eligibility Certificate under Section 13 (4B) of the Indian Medical Council Act, 1956. The communication is quoted herein below:

"Madam,

With reference to your application received by the Council office dated 15.02.2010, on the subject noted above, I am to inform you that you have studied Biology (Zoology and Botany) subject as additional subject after passing your 12th Qualification. As per the Regulations of the Council on Graduate Medical Education- 1997 the candidate has to undergo two year of study in Physics, Chemistry and Biology for issuing of Eligibility Certificate. Accordingly, you are not eligible for Eligibility Certificate and your application for eligibility is rejected."

2. Petitioner not only wants quashing of this annexure or communication but also a direction upon the Medical Council of India (MCI) to grant Eligibility Certificate so that the petitioner can utilize the degree of MBBS which she had obtained

from National Medical College, Birgunj, Nepal.

3. As per the petitioner, after clearing her matriculation examination she joined TPS College, Patna to do Intermediate in the year 2003-05 in science faculty. She had Physics, Chemistry and Mathematics and did her Intermediate in the said subjects and passed in 1st Division. After doing her Intermediate, it is the case of the petitioner, that she got interested in doing Biology as well, therefore, in terms of clause 13 of Bihar Inter Council Regulation she got herself admitted in one year Biology course in the year 2005 in the said TPS College. She appeared in the Biology paper in the year 2006, cleared the said examination and got 64% marks for which she was awarded a certificate. After acquisition of all these certificates and degrees, petitioner tried in various competitive examinations but ultimately succeeded in getting admission in MBBS course in National Medical College, Birgunj, which is recognized by Tribhuvan University, Kathmandu. She completed her course in the year 2014 and provisional certificate was issued in her favour. According to the petitioner, since she fulfilled all the criteria she also did her internship in Nepal and thereafter decided to obtain an Eligibility Certificate in terms of requirements of Section 13 (4B) of the Indian Medical Council Act, 1956 to enable her to practice Medicine or beget employment in India.

4. Her application was rejected in terms of Annexure- 5. Many rounds of letter writing etc. has been resorted to but MCI stuck to its earlier position that a person, who would like to practice Medicine, must have a minimum of two years of education in 10+2 system with practical training of two years in Biology to make her eligible to be granted Eligibility Certificate.

5. It is the stand of the petitioner that whatever course she pursued, including obtaining a degree from Intermediate Council of India in Biology after doing her +2 was in accordance with regulation of the Intermediate Council of Bihar. They have certified that the petitioner had completed one year of course in Biology with practical and, therefore, the alternative regulation of MCI will come into play. The necessary regulation is quoted herein below:

"4 (2) He/ She has passed qualifying examination as under:

(a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology/ Bio-technology and Mathematics or any other elective subjects with English at a level not less than core course of English as prescribed by the National Council of Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education

Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year pre-professional training before admission to the Medical

colleges.

(b) The intermediate examination in science of an Indian University/ Board or other recognized examining body with Physics, Chemistry and Biology/ Bio-technology which shall include a practical test in these subjects and also English as a compulsory subject."

6. It is the stand of the petitioner that 4(2) (b) will come into play so far as petitioner is concerned not 4(2) (a).

7. It is the contention of the petitioner's counsel that if this be so then the reason for rejection of Eligibility Certificate by MCI is for extraneous reason and not supported even by their own regulation.

8. A very detailed counter affidavit on behalf of MCI also has been filed. They have explained the scheme of things by going extensively into various provisions as well as the regulations and what is minimum standards which are required for any person before he or she can be given the Eligibility Certificate on a degree obtained from yet another country, which has been recognized on the basis of reciprocity. But to utilize such a degree, the Eligibility Certificate is a must. They have indicated in detail that regulation 4(2)(b) has no role to play because the requirement of two years of study in Biology is a must and the practical training which is required to be gone through for the studies of two years is also a must. The alternative is only an illustrative part of regulation 4 (2)(a) and not independent thereof.

9. It is also their stand that a similar kind of dispute was raised by yet another candidate in Delhi High Court and the Delhi High Court in the case of Raghukul Tilak v. Union of India and another, dismissed the writ application holding the mandatory requirement of two years of study in Biology with practical training a must before eligibility certificate could be issued. The said judgment of Delhi High Court has been annexed as Annexure-R- 1/8. This decision of learned single Judge is an exhaustive decision dealing with all the submissions and regulations including various judgments pressed into service. Since this Court has the benefit of the rational and reasoning provided by the learned Single Judge of Delhi High Court, this Court does not have to offer independent analysis of the arguments over and above what has already been dealt with and decided especially when the said decision of the learned Single Judge has also been affirmed by a Division Bench of Delhi High Court. This is evident from Annexure-R-1/9 as well as the SLP having been dismissed by the Hon"ble Apex Court meaning thereby that the law has been settled with regard to eligibility and entitlement or grant of eligibility certificate in this regard.

10. Since the petitioner had Physics, Chemistry and Mathematics as regular papers in Intermediate examination and as an after thought she passed Biology paper after doing one year of studies without having Biology as a regular subject in Intermediate. The Court has no objection against petitioner obtaining such a degree from Intermediate Council of Bihar. That is between the candidate and

the Intermediate Council but passing of an additional paper will not in any manner dilute the requirements of the statutes provided by the Medical Council of India under the Indian Medical Council Act, 1956.

11. In view of the above, the writ application is required to be dismissed and is dismissed since admittedly petitioner has not studied Biology as a regular subject for two years with practical at 10+2 stage.