

(2015) 12 PAT CK 0069

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16937 of 2015

Anil Kumar Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Constitution of India, 1950 — Article 254, 309

Indian Medical Council Act, 1956 — Section 10(A), 10-A(5), 11, 20, 20A

Citation : (2016) 1 PLJR 695

Hon'ble Judges : Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : Y.V. Giri, Sr. Advocate and Prashant Sinha, for the Appellant; R.R.K. Pandey, SC29, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Tripathi, J.—Twenty six petitioners have jointly filed the present writ application for a direction upon the Bihar Public Service Commission (hereinafter referred to as "B.P.S.C." for short) to give recognition to the Diploma courses pursued by them in various Medical Colleges of the State of Bihar for the purpose of their appointment as General Duty Medical Officer or as Specialist Doctors in terms of Advertisement No. 01/2014 to 12/2014 and 15/2014 respectively. They also want a direction upon the B.P.S.C. to award them 10 marks for their Post-Graduate Diploma Courses, which these petitioners have pursued, while considering them for the post of General Duty Medical Officer. They also want such consideration even for selection in the category of Specialist Doctors.

2. Yet another prayer made in the writ application is to give recognition to the diploma courses by deeming fiction to have been recognized in terms of Section-10-A(5) of the Indian Medical Council Act, 1956.

3. All these petitioners after completing their MBBS Course took admission in various Post-Graduate Diploma Courses in Government Medical Colleges. They completed their studies. It is also their case that they are working as Medical

Officers or Specialist Doctors on the basis of contract as per their selection done by the Bihar Health Society earlier.

4. The State of Bihar formulated a regulation, known as Bihar Health Service (Appointment and Service Condition) Regulation, 2013. This Regulation has been notified under Article 309 of the Constitution of India and is dated 12.11.2013. The Regulation is Annexure - 2 to the writ application.

5. On 25.09.2014, the Regulation was amended to include Diploma/DNB under the definition of Post-Graduate Degrees. As per regulation - 6 of the 2013 Regulation, candidates are to get 10 marks for their Post-Graduate Diplomas or Higher degrees, in case they are considered for appointment as General Duty Doctors. The Post-Graduate Diploma also makes them eligible for consideration as Specialist Doctors. Prior to coming of the 2013 Regulation, B.P.S.C. issued Advertisement No. 2 of 2009. Many a doctors, who did their Diploma Courses from various Medical Colleges of Bihar were selected and appointed in the past even though those courses were not recognized by MCI. Instances have been given in paragraph 9 of the writ application.

6. In terms of the Advertisement No. 15/2014, published by B.P.S.C. for the post of General Duty Medical Officer, the petitioners applied. Some other advertisements were also issued as Advertisement No. 01 of 2014 to 12 of 2014 for the post of Specialist Medical Officers. Some of these petitioners are applicants even for such posts.

7. After scrutiny of the application forms of these petitioners, they were provisionally found to be eligible, because when the B.P.S.C. uploaded the list of ineligible candidates, the name of petitioners did not figure in the said list.

8. Petitioners participated in the selection process and were also called for interview. During the course of such exercise, they came to know that B.P.S.C. is not awarding them 10 marks for holding Post-Graduate diplomas for General Duty Medical Officers nor were they being considered for appointment as Specialist Medical Officers, because the Post-Graduate Diploma courses pursued by them is not recognized by MCI. The petitioners are in a quandary, because the State Government is not giving them benefit, even though they have pursued their studies in Medical Colleges of the State, where these courses have been offered. B.P.S.C. is insisting on recognition by MCI. Having failed to elicit any response and to save their career as well as to beget an opening in life, the writ application has been filed.

9. Learned senior counsel, representing the petitioners submits that they do have valid Post-Graduate Diplomas as qualification, therefore, they are entitled to weightage of 10 marks and also by virtue of the said Post-Graduate Diplomas, they are entitled for consideration even for the post of Specialist Medical Officers. These Diplomas have been obtained on the basis of examination and admission offered by the State of Bihar. Recognition or non-recognition by MCI cannot come in the way atleast for admission under the State of Bihar. They cannot resile from

the position now on the ground that the petitioners' Diplomas do not have recognition from MCI. The fact that the petitioners are working as Specialist Doctors on contract basis under the State of Bihar should be a good enough reason for them to be given the benefit now.

10. The State filed a counter affidavit and their stand is crystallized in paragraph Nos. 5 to 12, which is reproduced hereinbelow:

"5. That the background of this case in brief is that the Health Department, Government of Bihar issued a notification No. - 1313(2) , dated 12.11.2013, whereby a new rule namely Bihar Health Service (Appointment & Service Condition) Rules, 2013 was notified (Annexure - 2). And in the light of the Rule, 2013 the B.P.S.C. published Advt. No. 1/2014 to 12/2014 and 15/2015 inviting application for appointment of General Duty Medical Officer and Specialist Doctors.

6. That at this juncture it is humbly pointed out that in the definition part of the Rule, 2013 itself, and it has clearly been mentioned that PG Degree means PG Degree recognized by the Indian Medical Council such as M.D., M.S. or equivalent or higher degree.

emphasis mine

7. That is further state here that later on, the B.P.S.C. sought guidelines from the Health Department, Government of Bihar with regards to equivalent higher qualification and thereafter, equivalent higher degree was defined and the Rule, 2013 was amended and notified vide Health Department's Notification No. 1050(2), dated 25.09.2014 and in accordance with the Clause 2 of the amended Rule, 2013 and Rule 2(E) was substituted as PG Degree means PG Degree recognized by the Indian Medical Council such as MD, MS or equivalent or higher degree or diploma/DNB (Annexure - 3).

8. That it is further submitted that petitioners knew it very well that their diploma degree has not been recognized by the Medical Council of India at the time of publication of advertisement itself, but they did not raise any objection in this regard and now, at this later stage when the result of the successful candidates have been published and the selection process is now over they have raised the instant grievance by filing this writ application before this Hon'ble Court.

9. That is further humbly submitted that petitioners have participated in the selection process being fully aware of the facts/rules and therefore, now after completion of selection process (i.e. after publication of the result), they cannot raise the instant grievance.

10. That it is also humbly pointed out that earlier, Specialist Doctors had been appointed in the State of Bihar on the basis of the provisions of Rule 2008 and in which the Rule 2(E) of Rule 2008 clearly lays down that Specialist Doctors means a Doctor who has obtained PG Degree from recognized teaching institution.

11. That it is further humbly pointed out that for appointment of General Doctors the essential qualification is only degree of MBBS and on that basis only, advertisement has been published.

12. That it is further humbly submitted that as per the Rule 6 of the Rule 2013, the distribution of marks has been made as follows:-

(1) MBBS - Total 50 Marks

(2) PG of higher degree - Total 10 Marks

(3) Work experience of Govt. Institution - Maximum 25 Marks

(4) Interview - 15 Marks

Total - 100 Marks

11. The stand of the B.P.S.C. is that they sought certain clarification from the State and based on the clarification as well as requirement or eligibility laid down in the advertisement, the selection process was initiated and carried out. They have to abide by the terms of the advertisements and the rules which form the basis for eligibility etc.

12. The Medical Council of India too has filed a very detailed affidavit. Their unambiguous stand is that the requirement of recognition by MCI to Diplomas and Degrees is mandated and envisaged under a Central Legislation. The said position also stands clarified and certified when in exercise of power conferred under section 20A, read with section 33(m) of the Indian Medical Council Act, 1956, the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 was notified. No person having a degree not recognized by Medical Council of India can use it to practice as a Doctor, because the same invites various kinds of punishment. Clause 7.20 of the said Regulation, 2002 has also been pressed into service, which reads that "A physician shall not claim to be a Specialist, unless he has a special qualification in that branch."

13. Counsel for MCI also relies on section 26 and 27 of the MCI, Act, which squarely lays down the mandate and the law. These two sections are also reproduced hereinbelow for ready reference:

"26. Registration of Additional Qualification - (1) If any person whose name is entered in the Indian Medical Register obtains any title, diploma or other qualification for proficiency in sanitary science, public health or medicine, which is a recognized medical qualification, he shall, on application made in this behalf in the prescribed manner, be entitled to have an entry stating such other title, diploma or other qualification made against his name in the Indian Medical Register either in substitution for or in addition to any entry previously made.

2. The entries in respect of any such person in a State Medical Register shall be altered in accordance with the alterations made in the Indian Medical Register.

"27. Privileges of persons who are enrolled on the Indian Medical Register:-

Subject to the conditions and restrictions laid down in this Act, regarding medical practice by persons possessing certain recognized medical qualifications, every person whose name is for the time being borne on the Indian Medical Register shall be entitled according to his qualifications to practice as a medical practitioner in any part of India and to recover in due course of law in respect of such practice any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled.

14. The above provisions read with section 20, 20A as well as Regulation, 2002 clearly lays down the need for recognition to the various degrees and diplomas by MCI.

15. If this is so, then there is no omission on the part of the B.P.S.C. in not awarding 10 marks for Post-Graduate Diploma or to consider the candidature of the petitioners for the post of Specialist Medical Officers.

16. Learned senior counsel for the petitioners counters the argument of the MCI and submits that section 10(A) of the MCI, Act protects the petitioners and their Post-Graduate Diplomas.

17. A reading of the said provision, however, does support the stand taken by the counsel for the MCI that the above provision covers and applies to the cases of new institutions and not for institutions, which are already established and imparting education of such kind. In fact, their cases are covered by section 11 of the MCI Act. The Court is tempted to quote the stand of the MCI from their counter affidavit, as it emerges and is crystallized in paragraph 11 to 14, which is as under:

"11. That Section 27 of the IMC Act provides that only those persons whose name is borne on the Indian medical Register shall be entitled according to his qualification to practice as medical practitioner. The relevant provisions of Section 27 are reproduced:-

"27. Privileges of persons who are enrolled on the Indian Medical Register:-

Subject to the conditions and restrictions laid down in this Act, regarding medical practice by persons possessing certain recognized medical qualifications, every person whose name is for the time being borne on the Indian Medical Register shall be entitled according to his qualifications to practice as a medical practitioner in any part of India and to recover in due course of law in respect of such practice any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled.

12. That from the above it is clear that a medical practitioner who is not having a recognized Post Graduate Medical Qualification cannot practice as a Specialist Doctor because a Specialist Doctor is required to have completely advance education and clinical training in a particular branch of medicine. In exercise of the powers conferred under section 20A read with Section 33(m) of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India, with the

previous approval of the Central Government, has framed the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 which mandates that a physician shall not claim to be specialist unless he has a special qualification in that branch. Any person who claims to be specialist without having special qualification in that branch shall be guilty of professional misconduct for which suitable punishments may be awarded. A copy of the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 is annexed as Annexure R-6/1.

13. That it is respectfully submitted that the State Government cannot recognize a medical degree or diploma which is not recognized by the Medical Council of India and included in the First Schedule of the IMC Act, 1956. In case the State Government wants recognition for these courses then procedure as laid down in Section 11 of the IMC Act has to be complied with. Nor can the State Government permit or appoint a person holding non-recognized Post Graduate Medical Qualification to practice as Specialist Doctor because under Section 27 of the IMC Act a medical practitioner is entitled to practice only according to his qualifications. In the event the State Government permits or appoints a person holding non-recognized Post Graduate Medical Qualification to practice as Specialist Doctor then such an act shall be repugnant to Section 27 of the IMC Act and as such void by virtue of the operation of Article 254 of the Constitution of India.

14. That, while exercising power under Section 20 and Section 33 of the India medical Council Act, 1956, the regulations of the MCI in relation to postgraduate medical courses, i.e. "The Postgraduate Medical Education Regulation, 2000", were approved by the Government of India on 22.08.2000. These approved PG Regulations were published in the official Gazette on 07.10.2000. The relevant portions of regulation 11 is reproduced hereunder for ready reference:-

".....11.1 Staff-Faculty

(a) A clinical department or its unit training candidates for broad or super specialities, shall have a minimum of three full time faculty members belonging to the concerned disciplines of whom one shall be a Professor, one Associate Professor/Reader/and one Astt. Professor/Lecturer, possessing the qualification and experience prescribed by the Medical Council of India;

Provided that the second or subsequent additional unit may be headed by an Associate professor.

Of these faculty members only those who possess a total of eight years teaching experience, out of which at least five years teaching experience as Assistant Professor/Lecturer gained after obtaining Post Graduate degree, shall be recognized as Post Graduate teachers.

(b) In each department, training candidates for super specialities, there shall be a minimum of three faculty members with requisite Post Graduate qualification

and experience - One Professor, One Associate Professor/Reader and one Assistant Professor/Lecturer, with at least two of them holding the degree of D.M./M.Ch in the concerned discipline.

Of these faculty members only those who possess eight years teaching experience out of which at least five years teaching experience as Assistant Professor/Lecturer gained after obtaining the higher speciality degree shall be recognized as post Graduate teachers;

Provided that in the case of super speciality courses which are being newly instituted relaxation of qualification and experience of Post Graduate teachers may be granted by the Medical Council of India for sufficient cause.

(c) In addition to the faculty staff, the strength or Resident/Registrars/Tutors/Demonstrators, as well as technical and other para medical staff shall be as per the staff strength prescribed for 50 or 100 or 150 students in the "Minimum Requirements for 50/100/150 MBBS Admissions Annually Regulations."

11.2 Minimum requirements for a Post Graduate institution:

(a) An institution conducting both undergraduate and Post Graduate teaching shall satisfy the minimum requirement for undergraduate training as prescribed by the Medical Council of India and shall also fulfil additional requirements for Post Graduate training depending on the type of work being carried out in the department. The extra staff required to be provided in various departments shall be as given in Appendix-I.

(b) A Department imparting only Post Graduate training shall:-

(i) Provide facilities consistent with the all round training including training in basic medical science and other departments related to the subject of training as recommended by the medical Council of India.

(ii) have as many autopsies, biopsies and autopsies as possible for teaching purposes; and

(iii) make available facilities of ancillary department for coordination of Training....."

18. To sum, therefore, the law and the provisions being what they are, coupled with the 2013 Regulation, notified by the State of Bihar, the petitioners have no case for award of 10 marks on the basis of their Post-Graduate Diplomas for consideration appointment as General Duty Medical Officers or for appointment as Specialist Medical Officers, since none of these degrees have recognition from MCI for a long long time. In fact, any indulgence shown to the petitioners would violate the Central Enactment and Legislation and Regulations, enacted by the MCI and will also compromise and mar the quality of the medical profession.

19. The Court has been informed that some of these petitioners have been selected even without award of 10 marks for their Post-Graduate Diplomas, but if

they get 10 marks they will rank higher and they will get a better opening.

20. Since the non-award of marks or ouster of the petitioners for consideration as Specialist Medical Officers have been negated by B.P.S.C. and legally so such indulgence cannot be shown, because the decision of the B.P.S.C. seems to be in consonance with the Statute and the Regulations.

21. Petitioners have no case. Therefore, the writ application is dismissed.