

(2015) 04 AHC CK 0097

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 50073 of 2014

Ankit Chaturvedi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Indian Medical Council Act, 1956 — Section 12, 13, 13(4-A), 13(4B), 13(4-B)

Citation : (2015) 4 ADJ 279 : (2015) 111 ALR 592 : (2015) 4 AWC 3519 :
(2015) 3 UPLBEC 1793

Hon'ble Judges : Yashwant Varma, J

Bench : Single Bench

Advocate : Ankit Mishra and K.N. Mishra, for the Appellant; Atul Kumar Srivastava, Avanish Mishra and S.C., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Yashwant Varma, J.—This petition lays challenge to an order dated 29th August, 2014 passed by the Medical Council of India (in short the Council) rejecting a representation made by the petitioner rejecting his request for grant of Eligibility Certificate and to consequently to appear in the Screening Test. The above representation itself came to be made by the petitioner pursuant to an order passed by a Division Bench of this Court on 27th March, 2014 on Special Appeal (Defective) No. 1288 of 2013, Ankit Chaturvedi v. Union of India and two others. This Court has heard Sri Abhishek Mishra in support of this writ petition and Sri Avaneesh Mishra for the Medical Council of India.

The essential facts necessary to be noticed for disposal of this writ petition are really not in dispute. From the records it transpires that when initially the prayer of the petitioner for issuance of an Eligibility Certificate had been rejected, he approached this Court by filing Writ Petition No. 5054 of 2012. This Court after noticing the various pleas raised on either side held that it was obligatory for the petitioner to have first obtained an Eligibility Certificate in terms of Section

13(4B) of the Act, 1956 and that the aforesaid condition was essentially to be completed before he was permitted to appear in the Screening Test contemplated under subsection (4A) of Section 13 of the Act, 1956. This Court further took note of the decision of the Council taken on 27th September, 2009 which dealt with certain cases where Eligibility Certificates were erroneously issued by the Medical Council of India to candidates who had not completed 17 years of age at the time of admission to the M.B.B.S. Course and held that the same would not come to the aid of the Petitioner.

2. The aforesaid decision of the Court was subjected to an intra Court appeal preferred by the petitioner which also met with the same fate on 27th March, 2014 with the judgment rendered by the Single Judge being affirmed. The Division Bench, however, made the following observations while disposing of the said appeal:

"19. In view of the aforesaid discussion, considering the fact that the appellant is now 27 years old and has completed MBBS Course and further in view of the fact that in some cases the Board of Governors of Medical Council of India has granted exemption to the applicants for grant of eligibility certificate when they had taken admission at the age of less than 17 years, we dispose of the Special Appeal with directions to the Board of Governors of the Medical Council of India, to reconsider the application of the petitioner-appellant for grant of eligibility certificate to allow him to appear in the screening test for registration as medical practitioner in India.

20. The required consideration will be made by the Board of Governors of the Medical Council of India, preferably within a period of three months."

3. It is in the above background that the petitioner approached the Council again for reconsideration of his case. The Council reviewed the case of the petitioner and also placed the relevant papers before its Executive Committee. The Executive Committee found that it was the admitted position that the petitioner at the time of taking admission in the foreign medical institution was not of 17 years of age. It referred to the requirements placed under the Graduate Medical Education Regulations, 1997 to hold that, therefore, the admission obtained was in violation of the statutory requirements. The Committee also took note of the decision of the erstwhile Board of Governors of the Council which superseded the resolution purportedly taken on 27th September, 2012 in terms of which provisional registration had been accorded to certain persons even though they did not fulfill and qualify a statutory requirement. The Committee noted that such certificates had been issued to the candidates erroneously by the Council.

4. The major thrust of the argument of Sri Abhishek Mishra this time around again centered around the various cases and instances where the Medical Council of India had granted permission/Eligibility Certificates and it was contended that in light of the above the petitioner was also entitled to similar treatment. The issue which therefore crops up for consideration of this Court is as to whether the

said exemption is liable to be accorded to the petitioner also.

5. It would not be out of place to note here that the fact that the petitioner did not qualify the requirements placed under the Regulations aforementioned, is not disputed. The Council has categorically asserted that at the time when the petitioner obtained admission to the foreign medical University, he had not attained the age of 17 years. This according to it was a mandatory requirement irrespective of whether such a corresponding requirement existed under the laws of the country where the medical college in question was situate. The above requirements which stands incorporated under the Act of 1956 and is referable to sub-sections (4A) and (4B) of Section 13 has been upheld by the Apex Court and which lucidly explained the legal position and obligations flowing therefrom in the following terms. The Court refers to the judgment rendered by the Apex Court in *Yash Ahuja and Others Vs. Medical Council of India and Others*, (2009) 12 JT 587 : (2009) 12 SCALE 687 : (2009) 10 SCC 313 : (2009) 15 SCR 667 : (2009) 6 SLR 1 : (2009) 10 UJ 4870 .

60. Then come the provisions of sub-sections (4-A), (4-B) and (4-C) of Section 13 which fall for consideration of this Court. It may be mentioned that sub-sections (4-A), (4-B) and (4-C) have been brought on the statute book by Act 34 of 2001 which has come into force with effect from 3-9-2001. Those provisions read as under:

"13. (4-A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised for enrolment as medical practitioner in that country after such date as may be specified by the Central Government under sub-section (3), shall not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his name entered in the Indian Medical Register unless he qualifies the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies the said screening test shall be deemed to be the recognised medical qualification for the purposes of this Act for that person.

(4-B) A person who is a citizen of India shall not, after such date as may be specified by the Central Government under sub-section (3), be eligible to get admission to obtain medical qualification granted by any medical institution in any foreign country without obtaining an eligibility certificate issued to him by the Council and in case any such person obtains such qualification without obtaining such eligibility certificate, he shall not be eligible to appear in the screening test referred to in sub-section (4-A):

Provided that an Indian citizen who has acquired the medical qualification from foreign medical institution or has obtained admission in foreign medical institution before the commencement of the Indian Medical Council (Amendment) Act, 2001 shall not be required to obtain eligibility certificate under this sub-section but, if he is qualified for admission to any medical course for recognized

medical qualification in any medical institution in India, he shall be required to qualify only the screening test prescribed for enrolment on any State Medical Register or for entering his name in the Indian Medical Register.

(4-C) Nothing contained in sub-sections (4-A) and (4-B) shall apply to the medical qualifications referred to in Section 14 for the purposes of that section."

72. Even if the material words of Section 13(4-A) are capable of bearing two constructions, the most firmly established rule for construction of such words is the rule of "purposive construction or mischief rule". This rule enables consideration of four matters in construing an Act--

- (1) what was the law before the making of the Act,
- (2) what was the mischief or defect for which the law did not provide,
- (3) what is remedy that the Act has provided, and
- (4) what is the reason of the remedy.

The rule then directs that the Courts must adopt that construction which suppresses the mischief and advances the remedy. Applying this principle of construction to sub-section (4-A) of Section 13 of the Act, this Court finds that the law before the enactment of the said sub-section was that medical qualifications granted by medical institutions in countries with which there was a scheme of reciprocity included in the Second Schedule, were recognised qualifications for the purposes of the Act. This law continues to be in force even after the enactment of sub-section (4-A).

75. The remedies mentioned in Sections 13(4-A) and 13(4-B) are prescribed because citizens of India, who have obtained medical qualifications from universities or medical institutions outside India, would be entitled to practise medicine in India and they cannot be permitted to treat other citizens of India with their half-baked knowledge and jeopardize their precious lives. Thus by adopting rule of purposive construction or mischief rule, it will have to be held that the provisions of sub-section (4-A) of Section 13 of the Act would also apply to the cases covered by Section 12 of the Act.

76. The argument that MCI has admittedly understood and applied the provisions of the Act by releasing press note to mean that the screening test would not be necessary for students who have obtained degree from foreign medical institutions recognised under Section 12 of the Act and, therefore, MCI is precluded in insisting that the students, who have obtained degrees from foreign medical institutions, is devoid of merit. It is true that at one stage MCI had released a press note clarifying for the information of the general public that eligibility requirements for taking admission in an undergraduate medical course mentioned in the Foreign Medical Institutions Regulations, 2002 and the Screening Test Regulations, 2002 would not be applicable to the students joining an undergraduate medical course in foreign countries, recognised and included in

the Second Schedule under Section 12 of the Act. However, this was the understanding of MCI, which is one of the parties before the Court. The scope of Section 13(4-A) is quite clear and covers all foreign medical institutions falling within the ambit of Sections 12 and 13 of the Act.

77. On a close and careful reading, provisions of the amending Act of 2001 with the Eligibility Requirement Regulations and the Screening Test Regulations, both of 2002, it becomes at once clear that MCI is obliged to stipulate the screening test in the case of all those candidates, who obtained medical qualification from medical institutions outside India falling within the purview of Sections 12 and 13 of the Act in view of the statutory provisions of Section 13(4-A) of the Act. The press release cannot be interpreted as precluding MCI from canvassing correct import of the provisions of the Act. In any view of the matter, the Court is of the firm opinion that press release by MCI cannot preclude the Court from placing correct interpretation of the Act. Therefore, the said plea has no substance and is hereby rejected."

6. From a reading of the above position in law as explained by the Apex Court, it is apparent that the case of the petitioner clearly falls foul of the requirements of sub-sections (4A) and (4B) of Section 13. Insofar as the reference to the earlier prevailing press note/decision of the Council is concerned, the Apex Court itself has noted that the same would not override the statutory provisions or the law as authoritatively pronounced and declared by it. In view of the above, it is clear that the petitioner cannot be granted any relief.

7. The other aspect of the matter of which this Court must duly take note of is this. The requirements framed by the Council are statutory and binding upon it. This Court cannot issue a writ which would amount to commanding the Council to either act contrary to the said requirements or in ignorance thereof. Even if there be certain instances where the Council has erroneously issued Eligibility Certificates, such decisions cannot come to the aid of the petitioner. This in light of the well-settled principle of law that Article 14 of the Constitution of India does not envisage or warrant negative equality. In other words there cannot be an insistence on parity with illegality.

For all of the aforesaid reasons, this Court finds no merit in the writ petition and it is accordingly dismissed.