
(1985) 08 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No. 230 of 1985

Arun H. Bakle

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-08-1985

Acts Referred:

Indian Medical Council Act, 1956 — Section 13(3), 15, 15(1), 33

Citation : AIR 1986 Bom 230

Hon'ble Judges : K. Madhava Reddy, C.J.; S.M. Daud, J

Bench : Division Bench

Advocate : R.M. Agrawal, for the Appellant; R.V. Desai, for K.C. Sidhwa and J.P. Cama, instructed by Gagrath and Co., for the Respondent

Judgement

K. Madhava Reddy, C.J.—Dr. Arun Bakle, M. D. Cardiologist from Patrice Lumumba Peoples' Friendship University, U.S.S.R., having undergone one year's practical training (internship) during 1979-80 as required by the rules and regulations in force in U.S.S.R. sought enrollment under S. 15(1), Medical Council Act (hereinafter referred to as "the Act"), on the Maharashtra State Medical Register. It is his case that he has practiced medicine as a physician and was a permanent adviser at surgical departments in the Moscow Clinical Hospital No. 64 during the year 1982-83. He also did some research work in September 1983. He was, however, required to leave the work abruptly due to sudden demise of his father at Sholapur in Maharashtra State, he applied to the Secretary, Medical Council of India, New Delhi, respondent 2 herein, for registration By a letter D/- 7-11-1983. respondent 2 informed him (Exh. "B") that "Indian Nationals holding recognised foreign medical qualifications included in Part II of Sch. 3 to Medical Council Act, 1956, are eligible for registration and practice in India. They have to undergo one year's practical training in an approved hospital in India in the subjects of Medicine, Surgery. Obst. & Gyn. and Community Medicine i.e. three months in each subject after taking provisional registration under S. 25(2), Medical Council Act, 1956." He reiterated his request clarifying that as he has already undergone practical training, he should be

granted registration without insisting upon further practical training. However, respondent 2 wrote to him on 16-4-1984 (Exh. "F") that in view of the revised procedure, he is required to undergo practical training in an approved hospital in India for one year. The petitioner, thereupon issued a noticed (Exh. "G") through his Counsel, and called upon respondent 2 to grant registration. The 2nd respondent, by his letter D/- 24-4-1984 (Exh. "H") informed him that the Medical Council of India, "in consultation with the Govt. of India, Ministry of Health, decided in public interest in February, 1981 that thereafter all Indian Nationals holding foreign recognised medical qualification will be required to undergo practical training in an approved hospital in India in order to familiarise themselves with the Indian conditions irrespective of the fact whether they had undergone the prescribed training in the concerned foreign country or not and since then this procedure has been followed in all cases uniformly. "To a further request, the petitioner was informed that no further correspondence would be entertained. He, therefore, invoked the jurisdiction of this Court, under Art. 226 of the Constitution, for a writ of certiorari to quash the above said communication, and for a writ of mandamus, to direct the respondents to issue permanent registration as also to grant him enrollment under S. 13(1) read with S. 15 of the Act, without insisting upon completion of one year's practical training (internship).

2. The Union of India, and the Registrar, Maharashtra Medical Council respondent 3 herein, have chosen not to file any affidavit in reply. The Secretary of the Medical Council of India, in his affidavit in reply filed on behalf of respondent 2 herein, reiterated the stand taken in the communications addressed to the petitioner referred to above. It was further stated that the Medical Council of India, is the authority to look after the minimum standards of medical education in India and to lay down norms for registration of medical practitioners in India. With a view to maintain the minimum medical standards and for maintaining the health and welfare of the people, the Medical Council of India, after mature consideration and in consultation with the Govt. of India decided that Indian Doctors who qualify from outside India, should undergo at least practical training for a minimum period of one year in this country so that they may get acclimatized with the conditions of India before they start relied upon their letter dated 13th February, 1981 addressed by the Secretary, Medical Council of India to the Joint Secretary to the Government of India, Ministry of Health and Family Welfare (Annexure "A"), and a further letter dt. 28-2-1981 (Annexure "B"). They also relied upon the fact that 193 foreign medical graduates have undergone the training. In this respect, on a query put by the petitioner, it was assented that M.D. Cardiology Degree of the U.S.S.R. is not recognised in India and what is recognised is, "General Physician" qualification granted by the Patrice Lumumba People's Friendship University, Moscow. In view of the stand taken in the affidavit in reply, the petitioner sought leave to amend the writ petition, and specifically pleaded that the degree of Doctor of Medicine "General Physician" of the Patrice Lumumba People's Friendship University held by the petitioner is a

degree included in Part II of Sch. 3, Medical Council Act, at Sr. No. "C", and in view of the provisions of S. 13(3), Medical Council Act, he is entitled to be enrolled on any State Medical Register, without one year's practical training in India for, he had undergone one year's practical training (internship) in Therapy, Surgery, Obstetrics and Gynecology in the year 1979-80 as part of his course of study. He also averred that "Bachelor's Degree of "General Physician" is titled as "Doctor of Medicine" of Patrice Lumumba People's Friendship University, Moscow". He is therefore not required to undergo any further training. He also specifically pleaded that only such candidates who have not undergone practical training (internship) as part of their course of study for the degree awarded to them would be required to undergo such training. The petitioner further pleaded that no Regulation with the previous sanction of the Central Government was made as required by S. 33 of the Act prescribing one year's practical training for such medical graduate to become eligible for registration. He also took up the stand that no such Regulation could validly be framed so as to deprive the graduates entitled to be enrolled under S. 13(3) read with S. 15 of the Act.

3. The respondents were given an opportunity to file a further affidavit in reply but none of the respondents have chosen to avail of this opportunity. In the result, as the record now stands, no regulation framed under S. 33 with the previous sanction of the Central Government is placed before the Court. There is not even an assertion by any of the respondents that any such Regulation was ever framed by the Medical Council of India, with the previous sanction of the Central Government as envisaged by S. 33 of the Act. The bare assertion of Respondent 2 is that the Medical Council of India, after mature consideration and in consultation with the Government of India decided that Doctors who qualify from outside India should undergo at least one year's minimum practical training in this country. The petitioner's claim has to be decided in this background.

4. Section 13 of the Act envisages recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First and Second Schedules. In Sch. 1 to the Act are included the medical qualifications granted by Universities or Medical Institutions in India which shall be recognized for the purposes of the Act. The Second Schedule to the Act records the medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity which shall be recognized for the purposes of the Act. The Third Schedule to the Act envisaged by S. 13 comprises of two parts. The First Part contains the medical qualifications granted to a citizen of India before the 15th August 1947, by medical institutions in the territories now forming part of Pakistan, and of medical qualifications granted to Indian citizen before 1st April, 1937 by medical institutions in the territories now forming part of Burma. The of the recognised medical qualifications granted by medical institutions outside India not included in Sch. 2, and recognised for the purposes of the Act. The medical qualification of a "General Physician" of the Patrice Lumumba peoples" Friendship University, Moscow, is a recognised medical qualification under Entry No. "C" of Part II of the Third Schedule of the

Act. Section 13 provides for recognition of such qualifications. Section 13, of far as it is relevant for our purpose, reads as under :

"Section 13. x x x x x x x x x

(1) & (2) x x x x x x x x x

(3) The medical qualifications granted by medical institutions outside India which are included in Part II of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act, but no person possessing any such qualification shall be entitled to enrollment on any State Medical Register unless he is a citizen of India and has undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country granting the qualification, or if he has not undergone any practical training in that country, he has undergone such practical training as may be prescribed."

5. It is not in dispute that the petitioner is a citizen of India and that he has undergone practical training after obtaining the qualification as prescribed by Rules and the Regulations in force in the country granting the qualifications i.e. in U.S.S.R. He, therefore, fulfills the requirements laid down by sub-sec. (3) of S. 13 of the Act entitling him to enrollment on the State Medical Register. S. 15 of the Act declares that persons possessing qualifications mentioned in the Schedules are entitled to be enrolled on any State Medical Register. Section 15, which is relevant in this behalf, reads as follows :-

"Section 15(1), - Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrollment on any State Medical Register.

(2) & (3) x x x x x x x x x

This right, however, is only subject to the other provisions contained in the Act. Now, so far as the present petitioner is concerned. the other provision that is relevant is S. 13(3) of the Act. The petitioner possesses the qualifications mentioned in Part II of Sch. III to the Act. Therefore, all that needs to be done before granting enrollment is to verify if he has undergone "such practical training after obtaining that qualification as may be required by rules or Regulations in force in the country granting the qualifications in force in the country granting the qualification, i.e. in the case of the petitioner by Patrice Lumumba Friendship University, Moscow". There is no dispute that he has undergone such a training. In our view, without anything more he is entitled to be enrolled. Only in respect of persons possessing the medical qualification included in Part II of the Third Schedule who have not undergone practical training are required to undergo such practical training as may be prescribed as laid down by the last part of sub-s. (3) of S. 13. Hence, irrespective of whether any Regulations have been framed under S. 33 prescribing further training or only administrative instructions have been issued by respondent 2, which,

according to it, must also be complied with, the petitioner is entitled to be enrolled on Maharashtra State Medical Register, as claimed by him.

6. It was, however, argued by Mr. Cama, learned Counsel appearing for the Medical Council of India, that the right of a foreign medical graduate to be enrolled on any State Medical Register being "subject to the other provisions contained in this Act" as laid down in sub-s. (1) of S. 15, is also subject to the Regulation made under this Act. According to him, the letter No. MCI-206(3)/81-Regn./2600D/-15th April 1981 addressed to the Registrars of all the State Medical Councils, constitutes a regulation, as contemplated by S. 33 of the Act. In that letter, it was stated, while communicating a copy of the Central Government Notification No. V. 11015/5/80-ME(P), D/- 10th April, 1981, the Registrars were informed that "the medical qualifications in Part II of the Third Schedule to Medical Council Act, 1956, shown in the Notification shall be recognised after 31-12-1981". They are further informed that "It has now been decided that persons (Indian Nationals) possessing these qualifications will have to undergo one year's practical training in an approved institution in India in the subjects or Medicine, Surgery, Obst. and Gynaecology and Community Medicines before they are allowed Final Registration. For doing this, they are required to be provisionally registered under S. 25, Medical Council Act, 1956. "The question is whether this letter constitutes a Regulation. A Regulation envisaged by S. 33 of the Act requires the previous sanction of the Central Government. As can be gathered from the Regulations issued earlier, it would appear that whenever Regulations were issued by the Medical Council of India, they were not communicated merely in the form of a letter but were issued more formally under its Seal, with a Certificate that "Recommendations on Minimum Standard Requirements..... are approved as regulations under S. 33, Medical Council Act, 1956, by the Government of India. "Apart from the form of it, the two essential requisites for promulgating any Regulation under S. 15 read with S. 33 are that (1) the Medical Council of India should first frame them as Regulations, and (2) obtain the previous sanction of the Central Government. They should then be published as Regulations, for the citizens have to comply with them. Every decision taken by the Medical Council of India, even with the approval of the Central Government, does not, of itself become a Regulation under the Act. The Regulation may govern the internal administration of the Council itself or may affect the rights of the third parties such as the petitioner. The letter relied upon by the learned Counsel for the Medical Council of India is not, in terms a Regulation nor does it refer to any previous approval or prior sanction of the Central Government. What is enclosed along with the letter is a Notification of the Central Government D/- 10th April, 1981, for inclusion of certain medical qualifications in Part II of the Third Schedule to the Indian Medical Council Act. It does not convey any approval or prior sanction to any Regulation. The letter, no doubt, refers to a decision as regards persons possessing certain medical qualifications being required to undergo one year practical training in an approved Institution in India in certain subjects. But,

whether, such training is also required in respect of those candidates who have already undergone such practical training as part of their course of study before they were awarded the degree or after they were awarded the degree by the respective Universities or it applies only to those who have not undergone such training is not clear; much less, does it state that this decision was taken with the previous sanction of the Central Government. Even if this letter could be treated as a Regulation, in the absence of any such statement it must be held that it does not satisfy the essential pre-conditions for the promulgation of a valid regulation, and, as such, it cannot be treated as a Regulation as required under S. 33 of the Act.

7. Further, it is evident even from this letter relied upon by the respondents, that up to that point of time a person possessing the qualification such as the petitioner did, was not required to undergo one year's practical training; that was only decided by the Medical Council of India "now" (i.e. 15th April 1981). The Previous correspondence referred to in this petition nowhere discloses that any such proposal was even made by the Medical Council of India or approved by the Central Government. Even in the Affidavit filed in reply the Medical Council of India did not assert that any such Regulation was issued with the previous sanction of the Central Government, If, at all, any proposal was made and it was sanctioned by the Central Government, it would certainly be a matter of record. If at all there was any such record, it should have been produced. For the reasons best known to the Medical Council it has chosen not to produce such record, if any, in existence. The Union of India, which should have been addressed for according prior approval to the proposal to issue the Regulation, though represented before this Court, has not chosen to file any affidavit in reply. All that was asserted was that since the Medical Council of India has made the proposal the affidavit filed by it should be taken as sufficient to establish that a Regulation, as sufficient to establish that a Regulation, as envisaged under S. 33 with the previous sanction of the Central Government was issued and the denial of the petitioner should be ignored. On the contrary, we would think that if any such Regulation was issued, the Medical Council of India and the Union of India should have it in their possession and since they have not produced those documents, an adverse inference should be drawn against them. In all fairness, it must be said that the Union of India itself did not assert that it has received any Regulation from the Medical Council of India for approval or that it has accorded previous sanction to the revised procedure referred to above.

8. Even assuming that it is a regulation, in our view, it cannot override the provisions of the Act especially sub-s. (3) of S. 13 and S. 15 which entitle a person possessing a degree referred to in Part II of the Third Schedule, and who has undergone practical training in the country which awarded him the qualification as required under the rules governing grant of such medical qualification without being required to undergo further training in India. Sub-sec. (1) of S. 15 which declares such medical graduate's right to be enrolled is subject only to the other provisions of the Act. There is no other provision of the

Act, so far as such medical graduates, as the petitioner, who have undergone a training as part of their course of study are concerned to undergo further training in India. That being a right conferred by the Act, no subordinate legislation like a regulation envisaged by S. 33 can take away that right by imposing a further condition, for S. 15(1) is only subject to the provisions of the Act and not to any rule or Regulation made thereunder. Any rule or Regulation for such a medical graduate to be enrolled can only prescribe the form or the fee payable for registration and not prescribe any additional qualification thereby taking away his right to be enrolled. The Medical Council of India, in communicating the aforesaid letter, purports to prescribe an additional qualification or a condition to be acquired or fulfilled by the petitioner to entitle him to be enrolled on the State Medical Register. Any such regulation cannot override or modify the provisions of the Act so as to take away the right vested in a citizen under the Act. However bona fide such power may be exercised, no subordinate legislation can override the provisions of the Act.

9. It was next argued that even if the letter cannot be deemed to be a regulation, they would be administrative instructions not expressly prohibited by the Act and the Medical Council of India is competent to issue administrative instructions in respect of all matters not expressly prohibited for carrying out the purpose of the Act. One of the objects of the Medical Council of India Act is "to provide for registration of the names of citizens of India who have obtained foreign medical qualification who are not at present recognised under the existing Act". According to the learned Coons, executive instructions could be issued to further the object and purpose of the Act. The question is not whether such instructions could be issued; the issue is whether such instructions can override the provisions of the Act or take away a right vested in a citizen under the Act. Mr. Cama vehemently of India is competent to issue administrative instructions. In support of his contention, Mr. Cama, learned Counsel for respondent 2, relied upon the decision of the Supreme Court in V.T. Khanzode and Others Vs. Reserve Bank of India and Another, Referring to the provisions of S. 58(2)(j), Reserve Bank of India Act, 1934, the Supreme Court held that :-

"x x x x x x x x x x

There is no doubt that a statutory corporation can do only such acts as are authorised by the statute creating it and that the powers of such a corporation cannot extend beyond what the statute provides expressly or by necessary implication. If an act is neither expressly nor impliedly authorised by the statute which creates the corporation, it must be taken to be prohibited. This cannot, however, produce the result for which Shri Nariman contends. His contention is not that the Central Board has no power to frame staff regulations but that it must do so under S. 58(1) only. On that argument it is material to note that S. 58(1) is in the nature of an enabling provision under which the Central Board "may" make provision for the purposes of giving effect to the provisions of the Act. This provision does not justify the argument that staff regulation must be

framed under it or not at all. The substance of the matter is that the Central Board has the power to frame regulations relating to the conditions of service of the Bank's staff. If it has that power, it may exercise it either in accordance with S. 58(1) or by acting appropriately in the exercise of its general power of administration and superintendent."

However, it must be noticed that this decision is not authority for the proposition that any such administrative instructions can override the provisions of the Act. It merely lays down that for carrying out the Act, where an authority is vested in the statutory body to frame Rules or Regulations, it may also issue administrative instructions in furtherance of that object. But, as even the Rule or Regulation so framed constitutes subordinate legislation, it cannot override the provisions of the Act; much less, can any administrative instructions which have no statutory force can do so. It may also be noticed that in *V.T. Khanzode and Others Vs. Reserve Bank of India and Another*, the Supreme Court was considering the powers of an institution like the Reserve bank of India which was authorised to frame regulation and also empowered under S. 17 to issue directions from time subject to such directions as may be given by the Central government under Sub-sec.(1) of S. 7, Reserve Bank of India Act, 1934. There is no such omnibus power vested in the Medical Council of India as is vested in the Reserve Bank of India so as to issue any administrative instructions affecting the right of a third party to be enrolled on the State Medical Register on fulfilling the conditions imposed by the Act.

10. Number of cases were cited before us to contend that the letter, referred to above, constitutes regulation, at least, of administrative instructions within the powers conferred upon the Medical Council of India and, therefore, must be complied with, and non-compliance therefore entitled the Medical Council of India to refuse enrollment. But, in view of the above discussion, we do not think it necessary to refer to those decisions in this judgment. Regulations and administrative instructions can be issued only for carrying out the purpose of the Act. Under the guise of exercising such power, the Medical Council cannot take away the right vested in a citizen under the Act.

11. In view of the above discussion, the petition succeeds and the same is allowed and the petitioner is declared entitled to be enrolled on the State Medical Register under Ss. 23, 33 and S. 15 read with S. 33, Medical Council Act, 1956. Rule is made absolute in terms of prayer Cls. (b), (c), (d) and (dd). Costs as incurred. 12. At this stage, Mr. Cama, on behalf of the 2nd respondent, applies for leave to appeal to the Supreme Court.

13. Application for leave to appeal to the Supreme Court is rejected.

14. Petition allowed.