
(2020) 11 RAJ CK 0083

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12097 Of 2020

Bobby Methew

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 24-11-2020

Acts Referred:

University Of Rajasthan Act, 1946 — Section 23A
Rajasthan Para-Medical Council Act, 2008 — Section 32

Citation : (2020) 11 RAJ CK 0083

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Raghu Raj Sharma, Bhavit Sharma

Judgement

1. Mr. RR Sharma, learned counsel for the petitioner submits that the petitioner's writ petition deserves to be allowed in terms of the adjudication

made in para-9 qua Issue No.E of the judgment dated 23.10.2020, rendered by Jaipur Bench of this Court in SB Civil Writ Petition No.8908/2020

(Lalit Kishore Vs. State of Rajasthan & Ors.) wherein the following conclusion was drawn by the Court :-

9. ISSUE NO.E - The Rajasthan Para Medical Council is refusing the candidates who have obtained Diploma from Universities of Rajasthan,

namely, NIMS University, Singhania University, JRN Vidyapeeth (Deemed) University, Jaipur National University, Mahatma Gandhi University of

Medical Sciences & Technology, Mahatma Jyoti Rao Phoole University, SMS Medical College, and Madhav University.

9.1 With regard to the registration with the Rajasthan Para Medical Council, it is noticed that there have been a protected litigation before this Court in

relation to the Courses being conducted by the various Universities and its

recognition by the Rajasthan Para Medical Council. A Division Bench of this Court at Principal Seat, Jodhpur, in Rajasthan Nursing Council Versus Singhania University, DBSAW No.671/2018 decided on 25.5.2018 while dismissing the appeal of the Rajasthan Nursing Council observed as under:

After hearing learned counsel for the parties, first of all it is required to be observed that in the grounds of the writ petition no other ground has been taken by the appellant except the ground which is incorporated and mentioned above. The only argument and ground taken in the appeal is that registration is required from appellant RNC by the Singhania University, which is established by law. We have considered the rival submissions and come to the conclusion that once the controversy has already been adjudicated by the Hon'ble Apex Court in the case of Dr. B.L. Asawa Vs. State of Rajasthan & Ors reported in AIR 1982 SC 933 and in case of Mrs. Madhu Santosh Vs. State of Rajasthan (SBCWP NO.2502/1989), decided on 21.2.1991 while relying upon the aforesaid judgment then there is no question to hold that any error has been committed by the learned Single Judge in directing the appellant RNC so as to deny the registration on the pretext that recognition is necessary from the appellant Rajasthan Nursing Council.

We are of the firmed opinion that if any University is established by law and imparting the course in the form of diploma and degree or qualification, that cannot be questioned by the appellant RNC for the purpose of registration. We have considered the judgment cited by the learned counsel for the appellant in the case of Gand Mal Dhaker & Ors. Vs. State of Rajasthan (DBSAW No.955/2011), decided on 17.2.2017 in which question of appointment and qualification was involved and hear the controversy is only with regard to registration, therefore, the judgment rendered in aforesaid case not applicable in the present case. In our opinion no error has been committed by the learned Single Judge so as to allow the writ petition filed by the respondents while following the adjudication made by the Hon'ble Apex Court , in the case of Dr. B.L. Asawa (Supra) which is subsequently followed by this court in the case of Mrs. Madhu Santosh (supra). Consequently, the instant special appeal is hereby dismissed.

9.2 In another DBSAW No.629/2018 titled as Rajasthan Para Medical Council Versus Hitesh Kumar Sharma & Ors., the Division Bench of this Court, at Principal Seat, Jodhpur following the aforesaid judgment gave its

verdict on 25.05.2018 as under:

After considering the judgment and the fact that the respondents petitioners acquired qualification from the University established by law, therefore,

no further recognition was required. Therefore, in our opinion, no error has been committed by the learned Single Judge so as to issue direction to the

Rajasthan Para Medical Council to register the respondents-petitioners in the writ petition filed by the respondents while following the adjudication

made by the Hon'ble Supreme Court in case of B.L. Asawa Vs. State of Rajasthan & ors. reported in AIR 1982 SC 933 and in case of Mr. Madhu

Santosh Vs. State of Rajasthan (SBCWP No.2502/1989), decided on 21.2.1992 and decision of the Punjab and Haryana High Court in case of Ms.

Neelam Devi & Anr. Vs. Haryana Nurses Registration Council & Ors. (Civil Writ petition No.4021/2009), decided on 19.2.2010 reported in 2010 158

PLR 323.

Consequently, there is no force in this appeal filed by the Rajasthan Para Medical Council, Jaipur. Hence, this special appeal is hereby dismissed.

9.3 In this regard, the plea taken by the State Government requires to be noted. It is the submission of the counsel for the State that so far as selection

for the posts of Assistant Radiographer and Lab Technician is concerned, the qualifications required are in terms of the amended Schedule issued vide

notification dated 30.08.2013. It is his submission that even though the Para Medical Council may register the candidates now, it should not in any

manner affect the selection where the document verification date is already over i.e. 14.10.2020 as per the notification dated 21.09.2020. The date of

document verification has not been extended thereafter and hence, the petitioners even if they are registered now with the Rajasthan Para Medical

Council and their contention is accepted that they are entitled for being registered, then too, they cannot be treated as eligible for the purpose of

selection process and they must wait for next selection, which may be conducted by the State Government in future.

9.4 On the other hand, the respective counsels, who have appeared for the petitioners have vehemently submitted that the action of the Rajasthan

Para Medical Council in not registering them or rejecting their candidature was wholly unjustified. On account of fault of the Rajasthan Para Medical

Council, the petitioners ought not to be deprived of their rightful claim for the

post, if they are otherwise found to be meritorious and falling in the merit.

9.5 With regard to NIMS University, it has been submitted by the counsel for the petitioners that the Coordinate Bench of this Court in the case of

NIMS University Versus Rajasthan Para Medical Council: SBCWP No.364/2017 decided on 03.05.2019 has categorically held as under:

23. As the respondent-council explicitly stated that the petitioner-university was accorded recognition for the said subject vide communication dated

24th November, 2015, for onward courses and it has established that the respondent- council came into existence after passing of the Rajasthan Para

Medical Council Act, 2008, in the year 2008, although the Rajasthan Para Medical Council and started functioning in the year 2014. Thus, indisputably

the petitioner-university was already running the course prior to functioning of the respondent-council, with approval of the UGC. Therefore, the

respondent-council cannot question and/or reject the recognition on the plea of prior approval for the respondent- council was not even functioning

prior to the year 2014. At this juncture it will be profitable to take note of the text of regulation 42 of the Rajasthan Para-Medical Council Regulations,

2014, providing the criteria for registration, which reads thus:

Eligibility for registration.- The following persons shall be eligible for registration, -

(i) who has obtained certificate of a Para-medical course from any Government body or private body permitted by the Government for the purpose

who has run the course and awarded certificate before the commencement of these regulations.

(ii) who has passed the Para-medical course from any institution recognized by the Rajasthan Para-medical Council.

(iii) who has passed the Para-medical course from any institution/ Government body, outside the territories of Rajasthan, recognized for the purpose by

the concerned State Government or Central Government.

(iv) who has passed the Para-medical course from any institution, outside the territories of India, recognized for the purpose by the Government of the

country concerned and verified by Government of India.

24. A glance of Regulation 42 (i), would reflect that one who has obtained a certificate of a Para-medical course from any Government body or

private body permitted by the Government for the purpose to run the course and awarded certificate before the commencement of these regulations is

eligible and entitled for registration. The fact that the petitioner-university had prior approval of the UGC, which is a Government body, is not in

dispute. Thus, it had the authority to run the said course. Hence, the resistance of the respondent-council on the plea of prior approval from the State

Authority, without any factual foundation.

25. Although the prior approval from the State Government is not required in light of the settled law by the Apex Court of the land, still the permission

was obtained by the petitioner- university. Thus, the respondent-council cannot restrict recognition of the courses run by the petitioner-university, prior

to functioning of the respondent-council.

26. For the reasons and discussions aforesaid and in view of the singular factual matrix of the case at hand; the writ petition of the petitioner-university

succeeds, and is, hereby allowed.

9.6 Learned counsel has also submitted that view taken by the Coordinate Bench was based on the judgment passed in Dr. B.L. Asawa Versus State

of Rajasthan & Ors., reported in (1982) 2 SCC 55 wherein it was held as under: ""11. The University of Bihar at Muzaffarpur is one duly established

by statute and it is fully competent to conduct examinations and award degrees. The Degree of Doctor of Medicine (Forensic Medicine)-M.D.

(Forensic Medicine)-of the University of Bihar is included in the Schedule to the Indian Medical Council Act, 1956 as a degree fully recognised by the

Indian Medical Council which is the paramount professional body set up by statute with authority to recognise the medical qualifications granted by

any University or Medical Institution in India. A Post-graduate Medical Degree granted by a University duly established by statute in this country and

which has also been recognised by the Indian Medical Council by inclusion to the Schedule of the Medical Council Act has ipso facto to be regarded,

accepted and treated as valid throughout our country. In the absence of any express provision to the contrary, such a degree does not require to be

specifically recognised by other Universities in any State in India before it can be accepted as a valid qualification for the purpose of appointment to

any post in such a State. The Division Bench of the High Court was, in our opinion, manifestly in error in thinking that since the Post-graduate degree

possessed by the appellant was not one obtained from the University of Rajasthan, it could not be treated as a valid qualification for the purpose of

recruitment in question in the absence of any specific order by the University of Rajasthan recognising the said degree or declaring it as an equivalent qualification. It is common ground before us that the University of Rajasthan does not conduct Postgraduate examinations in the subject of Forensic Medicine and it does not award the degree of M.L. (Forensic Medicine). In order that there should be scope for declaration of 'equivalence' of a qualification obtained from another body, there should be a corresponding qualification that can be earned by virtue of passing an examination or test conducted by the concerned University. There can be declaration of equivalence only as between a degree etc. awarded by the concerned University and one obtained from a body different from the concerned University. When the University of Rajasthan does not conduct any examination for the award of the degree of M.L. (Forensic Medicine), there cannot be any question of declaration of 'equivalence' in respect of such a degree awarded by any University. Unfortunately, the State Public Service Commission as well as the Division Bench of the High Court failed to notice this crucial aspect. We may also point out that the declaration of 'equivalence' referred to in Section 23A of the Rajasthan University Act as well as in Clause (vii) of Ordinance No. 65 of the Rajasthan University Ordinances can only be in respect of qualifications other than basic or Post-graduate degrees awarded by other statutory Indian Universities in the concerned subjects. In the case of a Post-graduate degree in the concerned subject awarded by a statutory Indian University, no recognition or declaration of equivalence by any other University is called for. This is all the more so in the case of a medical degree-basic as well as Postgraduate-that is awarded by a statutory Indian University and which has been specifically recognised by the Indian Medical Council.

9.7 Per contra, learned counsel appearing for the Rajasthan Para Medical Council has submitted that there are two set of candidates who have done course from NIMS University. One set of candidates are those who have done the course from the University itself and there are other set of candidates who have done the course through Distance Education. Learned counsel submits that so far as those candidates who have done course from the University can be governed by the aforesaid judgment and the Rajasthan Para Medical Council has duly recognized the courses conducted

by NIMS University after 2015 and would therefore be entitled to get registration, however, those candidates who have done Para Medical Course prior to 2015 i.e. 2014 or earlier, cannot be treated as eligible for registration and relies on the judgment passed by the Coordinate Bench of this Court in the case of Kuldeep Shukla Versus State of Rajasthan & Ors., SBCWP No.10826/2008 and bunch of writ petitions decided on 30.5.2011 wherein it was held as under: ""17) Conclusion that emanates from the discussion made above is that qualification possessed by the petitioners cannot be held to be recognized by the State Government or the Paramedical Council for employment under the Government of Rajasthan. Although, for that reason they may not be always ineligible for such appointment. However that confusion should not persist forever and this state of uncertainty must come to end. In order therefore to resolve the controversy for once and all, the State Government is directed to constitute the Paramedical Council as per Section 4 supra within a period of three months from the date copy of this order is produced before it. Matter with regard to recognition or otherwise of the qualifications held by the petitioners in the State of Rajasthan, shall be laid before the Paramedical Council, which in terms of Section 32 of the Rajasthan Para-Medical Council Act, 2008 shall take a decision thereabout within three months next after its constitution. If eventually, qualification possessed by the petitioners is recognized by the Paramedical Council, that recognition shall hold the field prospectively.

9.8 Those candidates who have passed regular course from NIMS University even prior to 2014 shall be treated to be eligible as the law in this regard has been settled by the Coordinate Bench in the case of NIMS University (supra) and also in view of the law laid down in Singhanian University (supra) and Hitesh Kumar Sharma (supra). As the Para Medical Council in its reply has admitted that they have recognized the course from 2015, all the candidates who have passed the examination have passed the diploma after 2015 are required to be duly registered with the Rajasthan Paramedical Council and accordingly, directions are issued to the Rajasthan Paramedical Council to register all the candidates who possess Diploma and who have done regular courses from NIMS University and other Universities within the State of Rajasthan. The Registration Certificate to such candidates shall be issued within a period of 15 days henceforth.

9.9 With the aforesaid directions, the writ petitions of such petitioners are allowed.

2. Learned counsel for the respondents are not in position to dispute the aforesaid position of facts and law.

3. The present writ petition is, therefore, allowed in terms of adjudication made qua Issue No.E of the judgment in case of Lalit Kishore (supra).

4. The petitioner is, therefore, held entitled for getting certificate of registration by respondent-Council.

5. The petitioner shall furnish a representation before the respondent-Council on or before 24 th November, 2020 indicating clearly the date of

filing/sending application for registration alongwith the date and particulars regarding payment of fee.

6. It will be required of the petitioner to ensure that his application, which has been filed prior to 30.07.2020, is complete in all respects by 27.11.2020.

The respondent-Council will not be obliged to intimate the petitioners about the discrepancies in a candidate's application.

7. The respondent-Council will process the applications of the petitioner and grant him registration by 10.12.2020 in accordance with law.

8. While considering the applicant's application, the respondent-Council will take into account as to whether the candidate had remitted the requisite

fee or had got the Demand Draft prepared on or before 30.07.2020. In case the same was done by 30.07.2020, the candidate shall be deemed to have

applied before 30.07.2020.

9. The State authorities shall conduct a fresh document verification from 14.12.2020 onwards.

10. The State shall issue a notice in this regard and all the candidates who possess the requisite registration on the date of document verification shall

be considered for the purpose of appointment subject of course if they are otherwise eligible.

11. The stay application also stands disposed of.