

(2023) 05 DEL CK 0264

In the Delhi High Court

Case No : Civil Writ Petition No. 6714 Of 2021, Civil Miscellaneous Application
No. 21117 Of 2021

Dr. Ankit Sharma

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 31-05-2023

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2023) 05 DEL CK 0264

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Abhinav Hansaria, Farman Ali, Usha Jamnal, Kirtiman Singh, Waize Ali Noor, T. Singhdev, Ramanpreet Kaur, Michelle Das, Abhijit Chakravarty, Sumangla Swami, Bhanu Gulati

Final Decision : Dismissed

Judgement

Prateek Jalan, J

1. By way of this petition under Article 226 of the Constitution, the petitioner seeks a direction upon the respondent No. 2- National Board of Examinations [hereinafter, "NBE"] to permit him to participate in the Post Diploma Centralized Entrance Test Counselling [hereinafter, "CETC"]. He also seeks a direction for allotment of a seat in the Diplomate of National Board [hereinafter, "DNB"] for Family Medicine (Secondary) course on the basis of marks obtained by him in the Post Graduate Diploma in Maternal and Child Health [hereinafter, "PGDMCH"] course completed from the respondent No.3- Indra Gandhi National Open University [hereinafter, "IGNOU"]. An alternative prayer has been made for allotment of a seat in DNB for Obstetrics and Gynecology (Secondary) or Paediatrics (Secondary) course, or a seat in DNB Family Medicine [hereinafter, "DNB-FM"] (Primary) course, exempting him from appearing in the entrance exam, and also from payment of fee for first year, again on the basis of his PGDMCH qualification.

2. The petitioner is a doctor, having completed the Bachelor of Medicine, Bachelor of Surgery [hereinafter, "MBBS"] degree from Dr. B.R. Ambedkar Medical College, Delhi, in the year 2016. He then took admission in the PGDMCH course at IGNOU in the year 2018, and completed it in December, 2019.

3. The petitioner was thereafter desirous of obtaining the DNB-FM (Secondary) qualification. According to the petitioner, his PGDMCH qualification entitled him to admission in the DNB-FM course as a Secondary candidate. For this purpose, he relied upon a public notice dated 31.03.2010 [Annexure 1 to the writ petition [page No. 36].], issued by the NBE, and the "Guidelines for Competency Based Training Programme in DNB-Family Medicine" [Annexure 2 to the writ petition [page Nos. 37-39].], which provided that a holder of the PGDMCH qualification would not be required to appear in the CETC, and could participate in counselling for DNB-FM (Secondary) course.

4. The petitioner's grievance is that when he sought to apply for DNB-FM in the year 2021, NBE did not provide for such a benefit to PGDMCH qualified candidates. The petitioner raised his grievance with the Prime Minister's Office, to which he received a response on 11.06.2021, stating that "the PGDMCH course of IGNOU is not recognized by MCI/NMC" [Annexure 13 to the writ petition [page No. 97].].

5. It is in these circumstances that the petitioner filed this writ petition.

6. In support of the petition, Mr. Abhinav Hansaria, learned counsel for the petitioner, submitted that, relying upon the public notice of NBE dated 31.03.2010, the petitioner took admission in the PGDMCH course at IGNOU, in the belief that he would be entitled to admission in the DNB-FM (Secondary) course. Mr. Hansaria submitted that the withholding of this benefit would now require the petitioner to take the CETC, and to undergo an extra year of training as he would be admitted as a DNB-FM (Primary) candidate. In this connection, Mr. Hansaria relied upon the judgment of the Supreme Court in *Suresh Pal vs. State of Haryana* (1987) 2 SCC 445 to contend that a candidate is entitled to rely upon a qualification which was recognized for a particular purpose at the time he/she took admission in the qualifying course, even if the recognition was subsequently withdrawn.

7. By way of an additional affidavit filed on 26.07.2022, the petitioner sought to place before the Court that there were certain sponsored seats available in Post MBBS DNB in Family Medicine, and sought a direction to be admitted therein.

8. The petition was opposed by Mr. T.S. Singhdev, learned counsel for the National Medical Commission [hereinafter, "NMC"], and Mr. Kirtiman Singh, learned counsel for the NBE.

9. Mr. Singhdev categorically stated that the PGDMCH course, offered by IGNOU, was never a qualification recognized by the Medical Council of India [hereinafter, "MCI"], or its successor, the NMC. He submitted that, in fact, no medical

qualification offered by IGNOU has ever been recognized by NMC, so as to entitle the petitioner to the relief sought in this petition. Mr. Singhdev distinguished the judgment of the Supreme Court in Suresh Pal [Ibid.] on this ground.

10. Mr. Singh submitted that the petitioner's prayer for admission directly in DNB-FM (Secondary) course cannot be granted, as direct admission in the Post-Diploma/Secondary qualification in Family Medicine has been done away with altogether. He also argued that the petitioner cannot have a vested right to the benefits derived from a qualification that was never recognized by the MCI/NMC, being the national regulators of medical education. He submitted that all admissions to DNB courses are now made through the National Eligibility cum Entrance Test [hereinafter, "NEET"], and not directly to the stage of counselling.

11. Mr. Singh drew my attention to the counter affidavit filed by the NBE wherein it is stated that, at a meeting held on 05.09.2018, the Governing Body of NBE decided to discontinue the Post- Diploma DNB-FM two years' course, and imposed a mandatory three years' Post MBBS course for DNB in Family Medicine. It is inter alia pointed out therein that the DNB-FM requires three years of training, whereas the Post-Diploma DNB candidates were being trained only for two years in Family Medicine. Their admission at the Post-Diploma stage was on the strength of the PGDMCH qualification, which is not a Family Medicine qualification at all. As there were no diplomas offered in Family Medicine by any institution, NBE decided to do away with the DNB-FM (Secondary) course altogether, and offers only the three years' Post MBBS/Primary DNB course in Family Medicine, for which all admissions are to be taken through the NEET- Post Graduate examination.

12. Relying upon the judgment of the Punjab and Haryana High Court in Gurpreet Singh and Others vs. Guru Nanak Dev University and Others 2012 SCCOnline P&H 22740, Mr. Singh submitted that the decision of an academic body on continuation or discontinuation of a particular course is not liable to interference of a writ court.

13. With regard to the petitioner's alternative prayer for admission to any other Secondary course or to the Primary course in Family Medicine without the NEET qualification, Mr. Singh submitted that the qualification of PGDMCH course does not render the petitioner eligible for participation in the CETC, as the eligibility criteria expressly requires a Post-Graduate Diploma from an MCI/NMC recognized institution, which the petitioner does not possess.

14. Mr. Singh drew my attention to several judgments which hold that claims of legitimate expectation or estoppel are not available in academic matters, and that academic bodies can change and modify the eligibility criteria from time to time with the aim of maintaining educational standards.

15. Having heard learned counsel for the parties, I am of the view that the relief sought by the petitioner cannot be granted, both on account of the fact that the Secondary DNB-FM course has been discontinued by NBE, and on the ground

that NBE was, in any event, entitled to modify the eligibility criteria in respect of the PGDMCH course.

16. The petitioner's case boils down to this: he undertook the PGDMCH qualification at IGNOU, which was admittedly not recognized by MCI/NMC, in the belief that it would qualify him for admission to the DNB-FM (Secondary) course. By this method, he would obtain the DNB qualification without having to take the NEET-PG examination and with a saving of one year. The petitioner suggests that the withdrawal of this benefit ought not to apply to him, as he joined the PGDMCH course prior to such withdrawal. The petitioner's alternative prayer is that he be admitted to a Secondary Course (two years, Post-Diploma) in any other specialization, or to the Primary course in Family Medicine (three years, Post-MBBS) without taking the NEET examination. By way of the additional affidavit dated 26.07.2022, the petitioner seeks yet another relief that he be admitted to a Sponsored seat in the Post MBBS DNB in Family Medicine.

17. The first ground which militates against the grant of such relief is that the DNB-FM (Secondary) course has been discontinued by NBE altogether. The question is, thus, not just of withdrawal of a qualification once recognized, but of discontinuing of the programme into which the petitioner seeks admission. The reasons summarised in paragraph 11 hereinabove provide justification for this decision. In any event, an academic body's right to so decide is well established, and the proposition that courts should not sit in appeal over a policy decision is no longer *res integra*.

18. These principles have been laid down by the Supreme Court in *National Board of Examinations v. G. Anand Ramamurthy* (2006) 5 SCC 515. in the following terms:-

"7. We have carefully considered the submissions made by both the learned Senior Counsel. In our opinion, the High Court was not justified in directing the petitioner to hold examinations against its policy in complete disregard to the mandate of this Court for not interfering in the academic matters particularly when the interference in the facts of the instant matter lead to perversity and promotion of illegality.

The High Court was also not justified in exercising its power under Article 226 of the Constitution of India to merge a past practice with decision of the petitioner impugned before it to give relief to the respondents herein. Likewise, the High Court was not correct in applying the doctrine of legitimate expectation even when the respondents herein cannot be said to be aggrieved by the decision of the petitioner herein.

... .." Emphasis supplied.

19. The judgment of the Supreme Court in *All India Council for Technical Education v. Surinder Kumar Dhawan* (2009) 11 SCC 726 provides valuable guidance in facts similar to the present case. Relevant observations therein are

as follows:-

"16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realising the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.

... ..

31. These being educational issues, they cannot be interfered with, merely because the court thought otherwise. If Aicte was of the view that only those diploma-holders with 10+2 (with PCM subjects) should be permitted to upgrade their qualification by an ad hoc bridge course or that such bridge course should not be a regular or permanent feature, there is no reason to interfere with such a decision. The courts cannot by their orders create courses, nor permit continuance of courses which were not created in accordance with law, or lower the minimum qualifications prescribed for admissions. The High Court's decision to permit candidates who have completed 10+1 plus four-years' post diploma course to take the bridge course cannot be sustained. 32. This is a classic case where an educational course has been created and continued merely by the fiat of the court, without any prior statutory or academic evaluation or assessment or acceptance. Granting approval for a new course or programme requires examination of various academic/technical facets which can only be done by an expert body like Aicte. This function cannot obviously be taken over or discharged by courts. In this case, for example, by a mandamus of the court, a bridge course was permitted for four-year advance diploma-holders who had passed the entry-level examination of 10+2 with PCM subjects. Thereafter, by another mandamus in another case, what was a one-time measure was extended for several years and was also extended to post diploma-holders. Again by another mandamus, it was extended to those who had passed only 10+1 examination instead of the required minimum of 10+2 examination. Each direction was obviously intended to give relief to students who wanted to better their career prospects, purely as an ad hoc measure. But together they lead to an unintended dilution of educational standards, adversely affecting the standards and quality of engineering degree courses. Courts should guard against such forays in the field of education." Emphasis supplied.

20. The petitioner's reliance upon Suresh Pal Supra (note 4), to argue to the contrary, is misplaced. The Supreme Court was concerned with qualification for the purpose of employment as Physical Training Instructors. The qualification of the petitioner therein was recognized at the time when he took admission into the course. There was no question of requirement of a qualification recognized by

a professional regulatory body such as the MCI/NMC. The recognition in question was only by the prospective employer for the purposes of the job. The case of a regulated profession, such as medicine, is entirely different. The PGDMCH course of IGNOU was never recognized as a qualification by the MCI/NMC, and to compel NBE to confer a benefit on the basis of such a qualification by reducing the period of training for DNB would, in my view, propagate a benefit being granted for a course which the regulator does not recognize. When seen in the context of regulation of professions and professional education, such a course does not commend to me, and also provides a significant distinction from the factual situation in the judgment in Suresh Pal Ibid.

21. Mr. Singh is also right in submitting that no legitimate expectation or claim of estoppel – let alone a vested right to admission – can arise in academic matters. The judgment of the Supreme Court in G. Anand Ramamurthy Supra (note 7) makes this position clear.

22. For the same reasons, the petitioner's alternative prayers are also untenable:-

a. As far as admission to any other Post Graduate DNB course is concerned, Mr. Singh has rightly drawn my attention to the eligibility criteria for DNB-Post Diploma Centralized Entrance Test, which requires a Post Graduate Diploma recognized by the MCI/NMC. The petitioner admittedly does not possess such a qualification, and has also not challenged the eligibility criteria.

b. The petitioner's alternative prayer for admission in Post MBBS DNB in Family Medicine without taking the NEET-PG examination is also unmerited. The award of an unrecognized qualification cannot, in any event, confer a right upon the petitioner to an admission to a course without taking the basic qualifying examination.

c. The petitioner's final submission that he be allotted a Sponsored seat in DNB-Family Medicine also cannot be granted. He is not qualified for the Sponsored seats which are available to government employees. In any event, the request is beyond the scope of writ petition, and has made by way of an additional affidavit dated 26.07.2022, when the admissions to the 2021-22 sessions were already long over. The eligibility criteria for the Sponsored seats also specifies that the admission will be given to NEET-PG qualified candidates. The petitioner cannot claim a vacant seat for which he is not otherwise eligible, merely on the ground that the seat remains vacant. The Supreme Court in Dr. Astha Goel and Others vs. Medical Counselling Committee and Others 2022 SCCOnline SC 734 has made this position quite clear.

23. For the aforesaid reasons, no relief can be granted to the petitioner in this writ petition. The writ petition, alongwith the pending applications, is therefore, dismissed.

24. There shall be no order as to costs.