

(2002) 08 DEL CK 0292
In the Delhi High Court
Case No : CWP 3157 of 2002

Dr. Birinder Singh Thind

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Indian Medical Council Act, 1956 — Section 10A, 10B, 11, 12, 13

Citation : (2002) 08 DEL CK 0292

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Anusuya Salwan, for the Appellant; Meera Bhatia, Smita Bankoti for Respondent No. 1 and Maninder Singh and N.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The petitioner in this writ petition has inter alias prayed for issuance of a writ of or in the nature of mandamus commanding upon the respondents to register his qualification as Ph.D. in Medicines (Cardiology) in terms of Section 26(1)(d) of Medical Council of India Act, 1956 (hereinafter referred to as "the said Act").

2. The petitioner, upon his completion of his 10+2 examination in the Central Board of Secondary Education on or about 30th May 1989, was selected for medical studies in USSR. He completed his MD, Physician Degree at the Tver State Medical Academy in the erstwhile Russia and obtained MD, Physician Degree on or about 28h June 1996. The said degree indisputably is equivalent to MBBS degree in India. He was registered in terms of the provisions of the said Act with the Medical Council of India as Physician. He completed his three years" medical course in Medicines from the said Academy from 1st September 1996 to 1st September 1999 where after he undertook the studies in Ph.D. Medicine (Cardiology) from the said Academy.

3. On his completion of the said Post-graduate Medical Course, the petitioner was

given the following Rotators Certificate:

"TO WHOMSOEVER IT MAY CONCERN

ROTATORS CERTIFICATE

This is to certify that Dr. Birinder Singh Thind was admitted in the academic year 1989 for Medicine course. After completing Russian Language course (Preparatory language course) from 01.09.89 to June 1990 from the Voronez State University, Voronez, was a regular student of the institute and pursued the M.D. Medicine course from 01.09.90 to 01.07.96 in the Tver State Medical Academy and successfully cleared all the exams in the 1st attempt. He was awarded M.D. Medicine/ Physician degree.

From 01.09.96 to 01.09.99, he worked as Junior Resident (Medical Officer) in the department of medicine while pursuing the Post Graduate course in M.D. (Medicine).

From 01.09.99 to 01.09.2001, he worked as Senior Resident (Registrar) in the department of Cardiology supervising independently Cardiology unit with 25 beds, and importing teaching to undergraduates and graduate Medical students of this institute.

Thus, Dr. Birinder Singh Thind was admitted in 1989 and awarded Ph. D in Medicine (Cardiology) in 2001 having successfully completed the Graduate, P.G. M.D. (Medicine) and Ph. D (Cardiology) course in the first attempt.

Signature & Stamp

Prof. D.V. BAJENOV

Vice Rector for Foreign Students of T.S.M.A." .

4. He was also awarded a Ph.D. Degree in Medicine (Cardiology) by the Supreme Attestation Commission, Moscow.

5. According to the petitioner, having regard to the law as it was prevalent then, he applied for registration of additional qualification in terms of Section 26(1) of the Act which was rejected by the second respondent herein by an order as contained in a letter dated 5th March 2002 which is as under:

"Subject: Registration of Additional Qualification u/s 26(1) of the I.M.C. Act, 1956.

Sir,

With reference to your application dated 21.11.2001, on the subject noted above, it is to inform you that Doctor of Philosophy in Medical Sciences (Ph.D) is recognized qualification when granted by Supreme Attestation Commission, Moscow in respect of the students admitted for undergoing the said Ph.D. course up to the year 1989.

Since you were admitted into Ph.D Course after the year 1989, you are not eligible for registration of Additional Qualification u/s 26(1) of the I.M.C. Act, 1956."

6. The petitioner thereafter filed representations before the Medical Council of India on several occasions.

7. However, the said additional qualification acquired by the petitioner was not registered. The contention of the petitioner is that having regard to the notification dated 7th January 1997 which was issued by the first respondent herein in exercise of its power conferred upon it under Sub-section (4), of Section 13 of the said Act in terms whereof Part II of the Third Schedule thereof was amended, he was entitled to get his additional qualification registered. The relevant portion of the said notification reads thus:

"S.O. In exercise of the powers conferred by sub-(4) of Section 13 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government after consulting the Medical Council of India, hereby makes the following further amendments in the Part II of the Third Schedule to the said Act, namely : -

In the said Part II of the Third Schedule, the following entries shall be added at the end, namely : -

First Name Changed Name Doctor of Philosophy (Ph.D)

In Medical Sciences (Stavropol Medical Institute) USSR*

Doctor of Philosophy (Ph.D.) in

Medical Sciences) Kalinin Medical

Institute) USSR *

Doctor of Philosophy

(Ph.D.) in Medical Science

(Tver State Medical

Institute USSR."

8. A Note was appended to the said notification which is in the following terms:

"* Note :- "The Post-graduate medical qualification Doctor of Philosophy (Ph.D) in Medical Sciences awarded by Supreme Attestation Commission, Moscow (USSR) to students sponsored by Medical Council of India or to other students fulfill in the minimum eligibility criteria for admission to undergraduate courses in India and admitted in the Institutions of erstwhile USSR for undergraduate or post-graduate courses up to 1989 shall be recognized medical qualification."

9. The contention of the petitioner is that having regard to the fact that as an Undergraduate student, he got himself admitted in the year 1989, having regard

to the said Note appended to the afore-mentioned notification, the respondents could not deny him the said benefit. However, admittedly, a notification was issued on 27th July 1999 which is in the following terms:

"NOTIFICATION

S.O. In exercise of the powers conferred by Sub- section (4) Section 13 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government after consulting the Medical Council of India, hereby makes the following further amendments in the Part II of the Third Schedule to the said Act, namely : -

In the said Part II of the Third Schedule, the following entries shall be added at the end, namely :

Doctor of Philosophy in

Medical Sciences (Ph.D.)

Supreme Attestation,

Commission Moscow

(This qualification shall be recognized qualification when granted by Supreme Attestation Commissions Moscow in respect of the students admitted for undergoing the said Ph.D. courses up to the year 1989).

(S.K. Mishra)

Desk Officer"

10. Whereas the submission of the petitioner is that by reason of 1999 notification, his vested right has been taken away, the contention of the respondent is that such notification had been issued with a view to rectifying a mistake occurred in 1997.

11. Ms. Anusuya Salwan, learned counsel appearing on behalf of the petitioner would contend that the stand taken by the respondents in the counter- affidavit is of no significance inasmuch as in terms of 1997 notification, a right has accrued to the petitioner to continue his studies in the Ph.D. degree. The learned counsel would contend that the courses of studies in Post Graduate Medical Course in Medicine as also Ph.D. being an Undergraduate course of five years, the rule as existing in the year 1997 would prevail and thus the stand of the respondents must be held to be contrary to law. The career of a student, according to the learned counsel, cannot be spoiled inasmuch as unless and until the said additional qualification is registered, having regard to the provisions of the said Act, he cannot take to the teaching profession.

12. Mr. Maninder Singh, learned counsel appearing on behalf of respondent No. 2, on the other hand, would contend that on the petitioner's own showing, he started his Ph.D. courses only on and from 1st September 1989 and as prior thereto namely on 27th July 1999, the notification had been issued, the instant

case shall be governed by the said notification. The learned counsel would contend that the 1997 notification must be read with the factual backdrop of events as stated in paras 11 to 13 of the counter-affidavit which are in the following terms:

"11-13. In reply to the averments made in para 11 to 13 of the writ petition, it is respectfully submitted that in pursuance of the said MOU, only the following number of students for undergraduate and postgraduate studies were sent during the years as mentioned in the table below : -

Year	No. of candidates sponsored by MCI	UG	PG		
1987	50	12	1988	44	07
1989	50	12	1990	30	Nil

The MCI after conducting a written test and interview had sent the students for studies in institutions in Russia as stated in para above."

13. According to the learned counsel, 1989 was the cut-off year for the aforementioned purposes as only up to that year, the State had sponsored some candidates for pursuing their studies in erstwhile USSR in Post-graduate studies where after the said practice was stopped and in that view of the matter the said action had to be taken inasmuch as only interests of those who had been sponsored, were required to be protected.

14. Although the case at hand is an unfortunate one, the principal question raised in this petition revolves round the interpretation of the notifications in question.

15. The said Act was enacted to provide for the reconstitution of the Medical Council of India Act and the maintenance of a Medical Register and the matters connected therewith.

16. The relevant provisions of the said Act read thus:

"(i) Section 2(e) of the MCI Act defines a "Medical Institution" to mean any Institution within or without India which grant degrees, diplomas or licenses in medicine.

(ii) Section 2(h) of the Act defines a "recognized medical qualification" to mean any of the medical qualification included in the three schedules to the said MCI Act, namely;

(a) The First Schedule relates to the recognized medical qualification granted by the Universities or Medical Institutions in India and as provided by Section 11 of the MCI Act.

(b) The Second Schedule recognizes the medical qualification granted by Medical Institutions outside India in accordance with the provisions of Section 12 of the MCI Act.

(c) The third schedule is divided into two (2) parts, Part I and Part II. It provides for the recognition of medical qualification granted by Medical Institutions not

included in the First and the Second Schedule, in accordance with the provisions of Section 13 of the MCI Act.

(iii) Section 3 of the MCI Act provides for the constitution and the composition of the council and its members and the manner and mode in which the said members are to be nominated or elected to the said council.

(iv) Section 6 prescribes the Council to be a body corporate by the name of "Medical Council of India" having perpetual succession and a common seal capable of suing and being sued.

(v) Section 10A inserted by Act 31 of 1993 provides that no person shall establish a Medical College or no Medical College shall open a new or higher course of study or training or increase its admission capacity in any course of study or training except with the previous permission of the Central Government obtained in accordance with the provisions of this Section. The said Section further lays down the manner and the mode in which such permission is required to be obtained from the central government.

(vi) Section 10B also inserted by Act 31 of 1993, provides that no medical qualification granted to any student shall be recognized into the event, the Medical College granting the said Degree is established without the previous permission of the Central Government.

(viii) Section 12 deals with the recognition of medical qualifications granted by Medical Institutions in countries with which there is a scheme of reciprocity. Medical qualifications granted by the medical Institutions outside India, which are included in the Second Schedule are recognized medical qualifications for the purposes of the MCI Act.

(ix) Section 13 as it stood before the amendment carried out by Act 34 of 2001, dealt with recognition of medical qualifications granted by certain Medical Institutions whose qualifications were not included in the First or the Second Schedule.

(x) Section 13(1) provides that the medical qualifications granted by Medical Institutions in India which are not included in the First Schedule and which are included in Part - I of the Third Schedule shall also be recognized medical qualification for the purposes of the MCI Act.

(xi) Section 13(3) before it was amended by Act 34 of 2001, provided that the medical qualifications granted by Medical Institutions outside India which are included in Part II of the third schedule shall also be recognized medical qualifications for the purposes of the MCI Act. It further provided that the person to be entitled to enrollment on any State Medical Register had to fulfill the following conditions, namely :

(i) That the said persons is a citizen of India, and;

(ii) The said person has undergone such practical training after obtaining

concerned qualifications as may be required by the rules or regulations in force in the country granting the qualification;

or

in the event of said person has not undergone the aforesaid practical training, the said person has accordingly undergone such practical training as may be prescribed.

(xii) However, after amendment, carried out by Act 34 of 2001 the amended Sub-section 3 of Section 13 reads as under :

The medical qualifications granted by medical institutions outside India before such date as the Central Government may, by notification in the official Gazette, specify which are included in Part II of the Third Schedule shall also be recognized medical qualifications for the purposes of this Act, but no person possessing any such qualifications 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.

8. That by Notification dated 7th January, 1997, the Government of India in exercise of the powers conferred by Sub-section 4 of Section 13 of the Indian Medical Council Act made amendments in Part- II of the Third Schedule of the Act wherein certain changes in the name were allowed and the Doctor of Philosophy (Ph.D) in Medical Sciences (Kalinin Medical Institute) USSR which was changed to Doctor of Philosophy (Ph. D) in Medical Sciences Tver State Medical Institute, USSR. The Notification had a "Note" which is reproduced hereunder for the convenience of this Hon"ble Court:

* Note : - "The Post graduate medical qualification Doctor of Philosophy (Ph.D) in Medical Sciences awarded by Supreme Attestation Commission, Moscow (USSR) to students sponsored by Medical Council of India or to other students fulfill in the minimum eligibility - criteria for admission to undergraduate courses in India and admitted in the Institutions of erstwhile USSR for undergraduate or post-graduate courses up to 1989 shall be recognized medical qualification".

Thereafter on 27.7.99 the Government of India issued another Notification whereby in exercise of powers conferred under Sub Section 4 of the Section 13 of the Indian Medical Council Act, 1956 made further amendments in Part - II of the 3rd Schedule of the Act.

9. Section 15 confers a right on a person having the medical qualifications listed in any of the Schedules, for enrolment on any State Medical Register. Section 15 read as under :

(1) Subject to the other provisions contained in this Act, the medical

qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

(2) Save as provided in Section 25, no person other than a medical practitioner enrolled on a State Medical Register:

(a) Shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority ;

(b) shall practice medicine in any State;

(c) Shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner.

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert u/s 45 of the Indian Evidence Act, 1872 (1 of 1872) on any matter relating to medicine,

(3) Any persons who acts in contravention of any provisions of Sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

10. Section 25, inter alia, dealing with the provisional registration provides that a citizen of India on producing proper evidence that he has been selected for practical training in an approved Institution, shall be entitled to be registered provisionally in a State Medical Register and shall be entitled to practice medicine. The said Section reads as under :

(1) A citizen of India possessing a medical qualification granted by a medical institution outside India included in Part II of the Third Schedule, who is required to undergo practical training as prescribed under Sub-section (3) of Section 13, shall, on production of proper evidence that he has been selected for such practical training in an approved institution, be entitled to be registered provisionally in a State Medical Register and shall be entitled to practice medicine in the approved institution for the purposes of such training and for no other purpose. (2) to (3)... ..

(4) A person registered provisionally as aforesaid who has completed practical training referred to in Sub-section (1) or who has been engaged for the prescribed period in employment in a resident medical capacity in any approved institution or in the Medical Service of the Armed Forces of the Union, as the case may be, shall be entitled to registration in the State Medical Register u/s 15."

17. Section 11 of the said Act provides for recognition of medical qualification required for Universities and the medical institutions in India whereas Section 13 thereof speaks of recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule. Sub-section (4) of Section 13 empowers the Central Government by notification

in the official gazette after consulting the Council to amend Part II of the Third Schedule so as to include any qualification granted by the Medical institution outside India which is not included in the Second Schedule. Both 1997 notification as also the 1999 notification were issued by the Central Government in exercise of its afore-mentioned power. It is beyond any cavil of doubt that in terms of the provisions of the General Clauses Act, the Central Government, while empowered to issue such a notification, can issue the same from time to time as and when any occasion arises therefore.

18. Recognition of degree by Medical Council is not a right of a student. Furthermore, whenever a recognition is granted, the same can be subjected to certain conditions. In the counter-affidavit, the respondents have clearly stated in the Note appended to the 1997 notification, the matter relating to taking admission of the students in the Under-graduation courses of studies after 1989 had been inserted by way of a mistake inasmuch as the same was not needed. With a view to rectifying the said mistake, the 1999 notification was issued.

19. From a perusal of the 1997 notification, it is evident that thereby a condition of recognition of Ph.D. qualification was imposed.

20. The 1999 notification was to be issued, having regard to the mistake occurred therein in terms whereof the qualification recognised by the Supreme Attestation Commission, Moscow in respect of students undergoing the said Ph.D. course up to the year 1989.

21. The requirements for admission as prescribed by the respondent No. 2 were:

"14. It is, Therefore, respectfully submitted that by the statutory notification dated 27.7.1999 the Central Government had clearly stipulated that it is only the students who had got admission in the Ph.D. course in the medical institutions in the erstwhile states of USSR up to the year 1989, their degrees of Ph.D. shall be recognized degrees. It was for this purpose for enforcing this clear stipulation that the necessary statutory notification u/s 13(4) of the Act was issued by the Central Government on 27.7.1999.

22. So far as the M.D. Physician Degree awarded in favor of the petitioner on 28th June 1996 is concerned, the said qualification has been registered. The petitioner, however, in the writ petition, categorically states:

"Thereafter the petitioner continued his further studies from 1.9.96 to 1.9.99 completely three years Postgraduate Course in Medicine from Tver State Medical Academy which is equivalent to M.D. in Medicine in India and from 1.9.99 to 2.9.2001 completed his Ph.D. in (Medicine) (Super Speciality in Cardiology) from Tver State Medical Academy. Copy of the Rotators Certificate granted by the Supreme Attestation Commission Moscow are collectively marked as Annexure P-3".

23. Nowhere in the writ petition, has any contention been raised by the petitioner to the effect that the Post-graduate studies leading to awarding of the Ph.D.

Degree in Medicine was an integrated course of studies. On the other hand, the statement made in the writ petition, as noticed hereinbefore, clearly suggests that three years' Post-graduate course was available in the said institution which the petitioner had completed from 1st September 1996 to 1st September 1999 which is equivalent to MD, Medicine in India. Thus, he had been awarded a separate degree in relation thereto. The petitioner, on his own showing has undertaken a separate course in Ph.D. from 1st September 1999 to 2001. It is, Therefore, *ex facie* not correct to contend that the course of studies was an integrated one where for he can claim the benefit of the 1997 notification.

24. In this view of the matter, we are of the opinion that by reason of 1997 notification, no legal right was vested or accrued in favor of the petitioner and thus, the question of the same being taken away of reason 1999 notification does not arise. Even if the 1999 notification is not construed to have any retrospective effect, the legal position will not change. This aspect of the matter has recently been considered by this Bench in *Ms. Anuradha Saini and Ors. v. Union of India*, CWP No. 2260 decided by this court on 11th July 2002.

25. For the reasons afore-mentioned, there is no merit in this writ petition which is accordingly dismissed but in the facts and circumstances (sic) case, there shall be no order as to costs.