
(2007) 09 DEL CK 0129
In the Delhi High Court
Case No : Writ Petition (C) 3406 of 2007

Dr. Puja Dewan

APPELLANT

Vs

National Board of Examinations

RESPONDENT

Date of Decision : 03-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 09 DEL CK 0129

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : K.K. Rai, Tarkeshwar Nath, R.K. Mishra, V.P. Singh, B.K. Pandey and S.K. Pandey, for the Appellant; Manmohan and Rakesh Gosain, for Respondent No. 1, Sanjay Kr. Ghosh and Bindu K. Nair, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioner seeks directions under Article 226 of the Constitution to the respondents to permit her to resume studies in the Fellowship of National Board (hereafter "FNB"), in the second respondent institution (hereafter "IRM").

2. The facts of this case are that Petitioner completed her Bachelor in medicine and surgery (MBBS) in 1997. She acquired a diploma in Obstetrics and Gynecology and 2002 from the Delhi University. She was conferred with membership of the Royal College of Obstetricians and Gynecologists, UK, in May 2003. She completed another course of postgraduate training in the subject and the first respondent (hereafter the NBE) admitted her to a Convocation in that regard in Kolkatta in 2006. She was admitted by the Council as a member of the National Academy of Medical Sciences in 2006.

3. The petitioner was declared successful in an entrance examination, held by the NBE, for the FNB, in 2006 in the sub specialty of Reproductive Medicine. Selections to such courses are based on an All India Entrance Test conducted by

the NBE; the written test was held on 9-12- 2006. It was followed by an interview of aptitude test. The interview was conducted on 15-2-2007. After counselling, the petitioner was chosen for the highly sought for academic and clinical training programme, as clinical fellow, to pursue a postdoctoral Fellowship of the National Board in the second respondent Institute (hereafter called the "IRM"). It is claimed that every year, only eight candidates are selected on All India basis out of hundreds who apply; two seats exist in the IRM. It is claimed that the end of January 2007 the petitioner was asked to report to the IRM within 15 days of receipt of the call letter, i.e on 15-2-2007. She submitted a joining report to the IRM for the Fellowship course and on 16th of February 2007; it was accepted. She was permitted to join as Resident Medical officer (hereafter called RM) under the postdoctoral fellowship programme of the NBE. On the same day, IRM issued a letter intimating the terms of the course as well as the stipend payable to her. The petitioner's joining report was forwarded to the NBE and intimation written to her on 26-3-2007

4. It is claimed that the course was originally scheduled to commence in the month of July; the selection process should have been completed at least by June. Due to the indecision and confusion by the NBE, the selection was however held in December and the interview was conducted later in mid February 2007. It is alleged that on account of this indecision and delay and to cover up its shortcomings, NBE wanted the selected candidates to join within 15 days. In the meanwhile, the petitioner had applied for a specialized course in Reproductive medicine and Operational Gynecological Endoscopies at Kiel School of Gynecological Endoscopies and Reproductive Medicine, at universitäts frauenklinik Department of Obstetrics and Gynecology, Schleswig-Holstein University Hospitals, Kiel in Germany in September 2006. It is alleged that she paid heavy fees to the tune of lakhs of rupees. It is also alleged that the contents of this course are highly relevant to the Fellowship programme she opted for and to which she was selected.

5. The petitioner claims that her training commenced on 1.2.2007 and the intimation of her interview had had been dispatched one day earlier on 31st of January 2007. She had left for Germany, to pursue the course but upon hearing that she was selected and had to appear for an interview for the FNP course, she returned all away from Germany and appeared in the interview. It is asserted that at the time of joining the IRM the petitioner disclosed to the institution about the current training programme in Germany which she had to undergo for about four months. She sought for guidance as to whether leave for that period could be obtained. It was claimed that the request to IRM was for study leave for the period between 19-2-2007 and 30th of June 2007. She relies upon an application dated the 16th of February 2007. It is alleged that the Director of IRM, i.e the competent authority granted leave without pay and noted that this was admissible to her.

6. After leave was sanctioned the petitioner left for Germany to pursue the

ongoing training. To her shock and dismay she received an e-mail dated 12-3-2007 from the director IRM that her leave for training in Germany had not been accepted by the NBE. He attached a letter addressed to him by the NBE. The communication referred to a letter of 6-3-2007 issued by the Deputy Director of NBE. The letter talked about the leave being contrary to the rules; it is asserted that to the best of the petitioner's knowledge no such rules existed. The petitioner responded and represented against the request, on 16-3-2007 protesting that when she applied for leave, the IRM did not record any reservation and now there was no reason for it to resile from that understanding. The petitioner sent a letter to NBE subsequently, that she would report to IRM on 1st of May 2007. When she reached the IRM, on 1-5-2007 and submitted a request for resumption of course, she was not allowed to rejoin the same. The IRM informed that another candidate had been allocated the course, in place of the petitioner; upon that candidate declining to join, Dr. Jayeeta Samana (third respondent) was given the post, in her place. The IRM's position was that the petitioner could not join the course without approval of the NBE. It is alleged that the petitioner attempted to meet with and talk to officials of NBE on several occasions; these were to no avail. In such circumstances the denial of any relief by the NBE and the position taken by it that she could not rejoin the course are termed arbitrary.

7. Mr. K.K. Rai, learned senior counsel urges that the stand of NBE as well as IRM are inexplicable and case arbitrary. Having first delayed the process of selection (which was normally scheduled to be completed in July-August 2006), to December 2006, the respondents are seeking to cover up their mistakes by insisting that the candidates who had planned their careers (in the absence of any communication, by NBE) that they should drop everything and join the in the course without finishing their prior courses or engagements. Learned Counsel submitted that after having sought guidance and and being assured that study leave of four months was permitted by the IRM, it was not open to NBE to adopt a contrary position. It is claimed that in fact there are no rules in this regard; Therefore the stand of the NBE is unreasonable.

8. Learned Counsel relied upon other pleadings, and submitted that the impugned action of the respondents smacks of arbitrariness. The IRM cannot, after having held out that the petitioner could go abroad and inducing her to leave, now turn around and say that the conditions of the Fellowship programme do not permit such long leave. It was submitted that the petitioner was not informed when she appeared in the interview by the NBE, that leave was impermissible. There is no rule, regulation or condition having legally binding effect which inhibits the petitioner from enjoying the facility of such leave for four months. The petitioner was also not required to disclose the admission for the course at Germany, when she applied and was interviewed. It was contended that the course for which she was selected to undergo in Germany is also a prestigious one; besides she expended huge amounts of money. Looked at from another angle, NBE called the petitioner for interview, when she had joined the

course in Germany. Despite this, she came back to India, to attend the interview as she was keen to pursue the Fellowship. The correct position was in fact that the IRM at the stage of her reporting to the course knew about the course in Germany; it did not ever object to her seeking to leave. Indeed the petitioner had booked a flight for getting back the next day; this too was disclosed to the IRM. After having assured of her leave for a limited duration, the respondents could not take a position to the contrary.

9. Learned Counsel further contended that the course pursued by the petitioner was of great relevance for the Fellowship and it could in fact enrich to the institution, i.e IRM, besides her own career. In this context and considering that the candidate who was allegedly given the post/ her seat, much later in the end of March did not join; but another candidate was offered the course, no prejudice could be caused to the respondents and much less the NBE ; it was merely a regulatory body.

10. The NBE, in its return has not disputed the essential facts leading up to the petitioner's selection to the FNB course in February, 2007. It however, contends that she was never assigned duties, after she submitted the joining report. She did not await decision of the NBE or its response to the leave request and left without ado for Germany. It is asserted that the NBE was never informed about the course, when the petitioner was interviewed on 15-2-2007. The IRM forwarded the petitioner's registration form, with a noting that she left on leave; her letter was forwarded to NBE for approval, with a covering letter on 27-2-2007. This established that the IRM had apparently, on a misconception and bona fide belief that the NBE was aware of the petitioner's intention to leave for Germany, granted leave, when she requested for it. The reality was otherwise; she never disclosed about her intention to take four month's leave, to NBE. Accordingly, when the NBE considered these facts, it issued the letter dated 6-3-2007 informing IRM that its rules did not permit leave of that nature, which was not permissible under any circumstances. The IRM was asked to intimate the candidate, to enable her to report back for the course.

11. Mr. Manmohan, learned senior counsel for NBE, besides relying on its counter affidavit, submitted that the authority for approving or sanctioning leave was ultimately the Board; it was bound by the leave regulations, which stipulated that no leave beyond 15 days was permissible. A copy of the leave rules was enclosed with the counter affidavit. It was further submitted that these regulations were implemented uniformly, in a non-discriminatory manner. Other instances, for the current fellowship programme, in different institutions, where candidates' request for leave beyond 15 days were rejected, were cited. One was the case of Dr. Veerendra Jagarlamundi, allocated a seat in the Amrita Institute of Medical Sciences, in a fellowship programme. His leave application for six months was turned down by NBE on 22-2-2007; the candidate was informed about it by the institute on 28-2-2007.

12. Learned Counsel submitted that the petitioner cannot claim any relief,

because the situation she finds herself today is of her own making. It was contended that the NBE was never informed by her about the intention to leave for Germany for four months. The fellowship programme to which she was selected, was not only prestigious, but rigorous as to attendance norms. The whole programme was for two years; a candidate could secure a total 14 days' study leave. If candidates are permitted to go on leave at their whim, the discipline of the course would be undermined; the object of the programme is intensive training. Subjective determination of desirability of another course, cannot be the basis of individual candidates leaving the programme at any point, at their convenience. Counsel relied upon the pleading of IRM, in its affidavit, and submitted that it had, on a bona fide belief that the NBE was aware of the petitioner's intentions, communicated acceptance of the request for leave.

13. The National Board of Examinations (NBE) was established in 1975 to cater to postgraduate and postdoctoral medical education in the country, through accredited institutions where the selected candidates are expected to join and undergo on the job training. Its objectives include recognition, as well as promotion of centres of excellence, creation of forum for high level scientific interaction between expert groups; facilitation of young postgraduates aspiring to provide for higher level of specialized services in the country and to promote medical research and innovations. Candidates are selected on the basis of merit through All India level tests. The petitioner, a qualified postgraduate medico in Obstetrics and Gynecology competed for the FNB programme; she was successful. The written test was held on 9-12-2007; interview to assess aptitude was held on 15-2-2007. She was offered one of the two fellowships, available in IRM on 15-2-2007. She reported and indicated acceptance on 16-2-2007. In the meanwhile, she had accepted admission to a four month course at universitäts frauenklinik Department of Obstetrics and Gynecology, Schleswig-Holstein University Hospitals at Kiel in Germany. She alleges that she even reported there on 1-2-2007, but returned to India to attend the fellowship interview as she was interested in pursuing that course. The NBE asserts that it was not intimated about her intention to rejoin the course at Kiel; the petitioner states that there was no obligation on her part to do so; no form of the application or condition required such disclosure. The fact remains that the petitioner's admission at the Kiel School and the impending absence for four months was unknown to the NBE at the time of her interview.

14. There is also no serious dispute that the second respondent sanctioned the request for leave, by the petitioner. It is however, asserted on its behalf that this was done on a mistaken belief that the petitioner had disclosed about her intention to go to Germany, to the NBE. It was asserted by second respondent that when the petitioner requested for leave, its Director was in the midst of his duties; he was also not made aware about the lack of authority to sanction the leave. The petitioner's leave request was forwarded to the NBE which intimated the second respondent about its unfeasibility and directed the candidate resume duties by its letter of 6th March 2007. These developments were communicated

to petitioner on 12th March 2007.

15. The petitioner has disputed the existence of any rule or regulation prohibiting grant of leave of the kind she sought. However, the NBE asserts otherwise; it has produced a copy of the rules, applicable to the fellowship programme. There can be no doubt about the fact that the Board is the regulatory and in the expert body which designed the course as well as the fellowship programme. It has an overriding interest in the manner in which the candidates have to comport themselves in the course. The NBE has placed on record a similar request for leave beyond 15 days where it declined the application. The institution concerned was intimated about it, around the same time as in the present case, i.e last week of February, 2007.

16. I do not doubt the petitioner's academic brilliance or acumen; her success in securing the fellowship, awarded to a chosen few, itself is a testimonial. That alone, cannot cloud the requirements of the programme. As discussed earlier, the petitioner was interviewed on 15th February, 2007; she did not disclose about her intention to go to Germany. This led to an avoidable communication gap between NDE and IRM; the latter assumed-as it transpires, wrongly- that the former was aware of the petitioner's impending departure to Kiel, for four months. Yet, the IRM cannot be fastened with the entire blame, because it forwarded the application for leave to NBE on 27-2-2007; on receiving the negative response, it immediately informed the petitioner about it.

17. Attendance and other academic stipulations, whether embodied in statutory rules or not, are meaningful; designed to attain specific objectives. In the present case, the fellowship programme is a two year course. The overriding concern of the NBE, while stipulating a 14 day cap on leave, is to ensure attendance in the programme. If individuals, howsoever brilliant, are permitted to leave the course at any point of time (in this case, at the commencement) and return on the basis of their assessments of the worth of other courses or programmes, in the fellowship, that would be injurious to the larger discipline of the course. If the matter is seen from another perspective, one may consider whether the petitioner could have stayed on and completed the fellowship, and later joined the Kiel course. Knowing that each course of study is regulated by its controlling norms, the answer, in all probability, would be in the negative; indeed that was precisely the reason she left for Germany. Such attendance conditions cannot, in judicial review, be examined on merits. Being part of standards evolved by an expert body, the court, cannot don the hat of a super executive and explore its wisdom.

18. The plea about the course having commenced late, due to lapses or omissions of the NBE too, are unpersuasive; they wear thin, particularly seen from the context of the petitioner's conduct. Having chosen to accept the fellowship, she cannot blame the NBE for alleged delay in conducting the admission procedure. That the petitioner found no difficulty in appearing in the test, or the interview is evident from her unconditional participation. The

argument appears to be put forward now, to tide over the discomfiture of having to forgo the course.

19. In view of the above findings, I find no arbitrariness or unreasonableness in the respondent's action, in denying permission to the petitioner to join the FNB programme. Consequently, the petition has to fail; it is dismissed without any order as to costs.