
(1990) 10 OHC CK 0029

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1939 of 1983

Dr. P.V. Rao

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-10-1990

Acts Referred:

Indian Medical Council Act, 1956 — Section 33

Citation : (1991) 1 OLR 134

Hon'ble Judges : V. Gopalaswamy, J; R.C. Patnaik, J

Bench : Division Bench

Advocate : B.L.N. Swamy and B.K. Mohapatra, for the Appellant; Addl. Standing Counsel, C.V. Murty, C.M.K. Murty, R.K. Mohapatra, K.B. Kar, B. Routray, U.C. Panda and S. Das, for the Respondent

Judgement

R.C. Patnaik, J.—In response to advertisement and prospectus issued by the State of Orissa inviting applications from persons desirous of taking up the Post-graduate course in the specialities specified therein in one of the Government Medical Colleges, the petitioner who was serving as Medical Officer, Jawaharlal Institute of Post-graduate Medical Education and Research, Pondicherry a Central Government institution, made an application for admission to the M. D. Course in T. B. and Chest Diseases. He qualified and was assigned to the V.S.S. Medical College, Burla affiliated to the Sambalpur University. He secured the M. D. degree in March, 1982. In September 1982, he was informed by the Government of India to his considerable dismay and anguish that the Post-graduate degree obtained by him was not a recognised degree. Hence, he was not entitled to the Post- graduate allowances. A copy of the letter issued by the Government of India has been filed as Annexure-3. The petitioner could not accept the allegation and wanted to know from the Sambalpur University if the degree of M. D. in T. B. and Chest Diseases which was granted to him by the Sambalpur University was one recognised by the Indian Medical Council. He has annexed his letter dated 7-1-1983 to the University as Annexure-4. He waited in vain for eight months to receive a reply from the University and then moved this Court in September,

1983. He sought a mandamus directing the opposite parties to recognise the P. G. Degree secured by him.

2. Admittedly the degree obtained by the petitioner has not been included in the first schedule appended to the Medical Council Act. Section 11 of the Indian Medical Council Act contains provision relating to recognition of medical qualification granted by universities or medical institutions. Such medical qualifications which are included in the first schedule are to be recognised as medical qualifications for the purposes of the Act. Sub-section (2) provides that any university or medical institution desirous of granting medical qualification not included in the first schedule might apply to the Central Government to have such qualification recognised whereupon the Central Government after consulting the Council may by notification amend the first schedule so as to include such qualification therein. Admittedly, the M. D. degree in T. B. and Chest Diseases granted by the Sambalpur University does not find place in the first schedule. Hence, is not a recognised medical qualification.

The recommendation of the Medical Council of India on post- graduate medical education approved by the Government of India as regulation u/s 33 of the Indian Medical Council Act provides as under :

" The Universities are advised to get their Post-Graduate Training Facilities and Courses at a given centre evaluated by the Council before the courses are actually started."

3. At the hearing it was asserted that till filing of the writ application there had not been any evaluation by the Council of the Post- graduate courses training facilities in T. B. and Chest Diseases provided by the Sambalpur University at the V. S. S. Medical College, Burla. Hence, question of recognition of the said degree could not arise. Evaluation by the Council has been enjoined with a view to ensuring adequate educational facilities, requisite equipments, proper environment, teaching by competent. and qualified teachers, edequate library facilities and accommodation. Evaluation is enjoined as" a safe-guard against sub-standard teaching and training facilities. The higher and more specialised the qualification, the greater should be the scrutiny as to standard. Council therefore has advised the Universities to get the Post-graduate training facilities and courses at a given centre evaluated by the Council before the courses are actually started. The emphasis is on the expression "before" the courses are actually started so that students do not waste their time in undergoing sub-standard and unnecessary medical courses. Once a degree of a particular university is recognised, the burden shifts to the Indian Meoical Council because recognition is granted on its satisfaction upon evaluation that the knowledge and proficiancy gathered by the students are adequate and conform to standard.

4. It, therefore, pains us to learn that the Government could run courses and the Sambalpur University could confer degrees not recognised by the Indian Medical Council; Government could adimit students to courses which on evaluation had

not been found to be satisfactory or up to the mark.

5. Private persons and educational institutions are denounced and condemned when they start courses or set up institutions and admit students when neither the institutions nor the courses are recognised or approved, or when the institutions are not affiliated, as required by law. We denounce and condemn because unwary youngsters anxious to have higher education in furtherance of their aims and aspirations in lives fall a prey to the allurements but rue the day when they painfully discover that all had been in vain, a good part of their lives has been wasted, money has been squandered. Many of them do not belong to affluent families. In sheer frustration and desperation, they run from pillar to post and are further exploited.

6. Should there be a different standard by which we judge the Government and the University ? The problem is before us in flesh and blood. How improper and unethical has been the acts of the Government and the University ? it is not a case where we could sweep the deficiency under the carpet and console the students of the State who had secured M. D. degree in T. B. and Chest Diseases from the V. S. S. Medical College, Burla, that there would be no difficulty in recognition of the degree in the State for after all V. S S. Medical College, Burla, as a Government College. Neither the Government nor the University can in any circumstance include the M. D. degree in T. B. and chest diseases, conferred by the Sambalpur University in the first schedule. There lies the rub. The qualification not being a recognised one is worthless in many respects. True, the students may have added to the repertory of his knowledge by the teaching imparted, by the training facilities provided. May be, he is a better physician when he obtains the degree than when he entered the portals of the V. S. S. Medical College, but that is not all in this temporal world. He joined the institution in the belief that the qualification was a recognised one so that that would further his prospect in service and would confer on him additional pecuniary advantage. Was he not deluded ? Was he not cheated? Can there be two opinions on this ? There is an expression in law known as "suppression veritatis" which means suppression of relevant and material facts, which is as bad as *suggestio falsi*, i. e. "false representation deliberately made. Both delude the person-one by action" and the other by inaction.

7. We are afraid, had the State Government and the University disclosed that the qualification was not recognised by the Indian Medical Council, the petitioner would not have sought admission, but would have looked for other pasture. At least he would not have wasted his time and money pursuing an object which does not advance his prospect, either in we fail to understand how the University could which was not recognised by the Indian Medical Council. It is asserted by the counsel for the petitioner that till 1985, "the Council had not certified and neither the course nor the degree had been recognised. We understand what discomfiture and embarrassment the petitioner must have faced on the disclosure. The ignominy and ridicule that, he must have faced. What opinion

does he have of the University and the Government ? These are questions of great moment which he has posed. Having regard . to the categorical provision in the Indian Medical Council Act, though we have all sympathy for the petitioner and. we feel for him, we cannot grant him a recognised degree, we cannot declare the qualification obtained by him as a recognised one. Until the degree obtained by him is recognised with retrospective effect that is possible under the law or till he secures a recognised-degree, he would not be entitled to the Post-graduate allowances, payment of which was discontinued. We do not know how long he would suffer that loss. Taking all these aspects into account, we direct the Sambalpur University and the State Government who are to blame wholly, to pay the petitioner in equal proportion Rs. 10,000/- as compensation. Though the counsel for the petitioner submitted that the Government of India should also be made responsible, we do not agree. It has little role in what has come to pass. The payment be made within two months from the date of receipt of the order.

8. We hope this case would be sufficient caution to the State Government and the Universities to act in accordance with law so that the future of unwary third parties are not devastated.

With the aforesaid observation and direction., the wit application is disposed of. Copy of this judgment be sent to the Registrar of Sarnbalpur University and the Chief Secretary, Orissa, for compliance.

There would be no order as to costs.

V. Gopalaswamy, J.

I agree.