

(2010) 03 GUJ CK 0018
In the Gujarat High Court

Case No : Spl. Civil Application No. 8855 of 2009

Dr. Ravichandra J.B.

APPELLANT

Vs

Dean and Others

RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Indian Medical Council Act, 1956 — Section 11(2)

Citation : AIR 2010 Guj 82

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : M.V.V. Ramanna and Kurian Sanjay, for the Appellant; S.N. Shelat V.D. Nanavati and Mitul K. Shelat, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, C.J.—Respondent Dean, Smt. N.H.L. Municipal Medical College (hereinafter referred to as "College" for short) giving a reference of a letter dated 20-7-2009 issued by the Gujarat University, issued impugned letter dated 21-7-2009 cancelling petitioner's admission already made in MCH CT Surgery course. The main ground given is that the petitioner as doesn't hold qualification of M.D., M.S., D.M., he was not eligible for admission to this course in question.

2. Learned Counsel appearing on behalf of the petitioner while challenging the decision contended that Diplomate of the National Board (DNB) qualification having treated equivalent to M.D., M.S., D.M. and M.Ch., the respondent cannot hold the petitioner ineligible. The college which originally rightly admitted the petitioner treating DNB as equivalent to M.D., M.S., and D.M. on wrong opinion given by the Gujarat University has issued illegal order of cancellation. Counsel for the petitioner places reliance on the Note below First Schedule of Indian Medical Council Act, 1956 as inserted by notification dated 20-2-2009.

3. Per contra, according to the counsel for the Medical Council of India, in view of

equivalence of qualification decided by the Medical Council of India in its meeting held on 19-8-2009, in absence of structured residency programme of DNB, said qualification (DNB) cannot be held to be equivalent to M.D., M.S. or D.M. Course and, therefore, recommendation has been made to revoke the notification dated 20-2-2009.

4. In the present case, it is not in dispute that in the matter of admission to the M.Ch. C.T. Surgery course, parties are governed by the Indian Medical Council Act, 1956 and statutory guidelines issued by the Medical Council of India, if not contrary to the Act.

5. In exercise of power conferred under Sub-section (2) of Section 11 of the Indian Medical Council Act, 1956, the Central Government inserted the following Note in the first schedule of Indian Medical Council Act, 1956 by notification dated 20-2-2009 and quoted hereunder:

1. The Diplomate National Board (DNB), qualifications included in this Schedule shall be treated as equivalent to M.D., M.S., D.M. and M.Ch. qualifications of the respective speciality or super speciality, as the case may be, for all purposes including appointment to the teaching posts in the medical institutions.

2. The teaching experience gained while pursuing DNB courses shall be treated as teaching experience for appointment to the teaching posts in the medical institutions.

6. The Medical Council of India in its meeting held on 19-8-2009, while dealing with the admission to Super Speciality course, recommended to revoke the notification dated 20-2-2009 but the said decision has not been given effect as evident from the proceeding dated 19-8-2009. Relevant portion of the proceedings reads as follows:

(iv) Equivalence of DMB with MD/MS/ DM/MCh. The Medical Council of India impressed upon the Central Government the need to recall the Central Government Notification dated 20th February, 2009 for maintaining the standard of medical education in the country. It was pointed out that there is no structured residency programme of DNB and majority of the centres of DNB are private and semi-private organizations which are non-teaching in character. It was agreed to revoke the above said notification and withdraw letters dated 17-8-2004 and 4-1-2006.

7. Further, as Medical Council of India's decision cannot over-ride the equivalence as inserted by the Note below first schedule of Indian Medical Council Act, 1956 and under the Act, the Diplomate National Board (DNB) qualification included in the schedule has been treated as equivalent to M.D., M.S., D.M. and M.Ch., the qualification of respective speciality or super-speciality, it was not open to the respondents to cancel admission of the petitioner as was taken in super speciality M.Ch. course giving reference to Medical Council of India's proceedings dated 19-8-2009. For the reasons aforesaid, while we

declare letter issued by the Gujarat University dated 20-7-2009 as illegal, set aside the order contained in the letter dated 21-7-2009 and allow the Special Civil Application. There shall be no order as to costs.