

(2010) 02 DEL CK 0083

In the Delhi High Court

Case No : Writ Petition (C) 2877 of 2003 and CM Appl No. 4883 of 2003

Dr. Ravinder Singh

APPELLANT

Vs

Medical Council of India and Another

RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Citation : (2010) 02 DEL CK 0083

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Manoj Goel, Shovodeep Roy and Gopal Verma, for the Appellant; T. Singhdev, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The Petitioner is aggrieved by the denial of permanent registration as medical practitioner by the Medical Council of India ("MCI") and has accordingly filed the present writ petition.

2. The MCI has denied registration to the Petitioner on two grounds. The first is that as against the minimum qualifying marks of 50% in the +2 examinations (Senior Secondary Examination), the Petitioner had secured only 49.7% marks. Secondly, in the judgment dated 8th March 2002 of the Supreme Court of India in Medical Council of India Vs. Indian Doctors from Russia Welfare Associations and Others, , a one-time exemption was granted to those who were ineligible on any one ground and who had applied for registration prior to 15th March 2001. The Petitioner had not applied by that date and therefore, he had to necessarily qualify in the mandatory screening test prior to being granted registration.

3. The facts are really not in dispute except on one point i.e. whether the Petitioner applied prior to the cut-off date, i.e. 15th March 2001? If the Petitioner is able to succeed on the first point urged by him, that his 49.7% marks in the +2 examinations should be considered as 50% by applying the principle of "rounding off, then he would not be ineligible and the question of availing the

one-time exemption to those applying before the cut-off date would not arise.

4. The Petitioner qualified in the +2 examination with 49.7% marks. He then went to Russia and completed MD (Physician) course (equivalent to MBBS) in India in November 2000 from the Daghestan State Medical Academy, Russia which is under the Ministry of Public Health and Medical Industry of the Russian Federation and is a recognized Medical Institute of the MCI under Part II of the Third Schedule of the Indian Medical Council Act 1956 ("Act"). It is stated that in order to be eligible for the MD (Physician) course candidates were required to pass a merit-based examination scoring a minimum of 60% marks in the aggregate. For the preparatory test a 5-point rating system is followed by the Russian Medical Academy according to which a grade point of 5 (excellent) is equivalent to 90% to 100%, 4 (good) is equivalent to 80% to 89% and 3 (satisfactory) is equivalent to 60%-79%. The Petitioner successfully qualified the said preparatory test by securing grade point ratings of 4, 3 and 3 in Physics, Chemistry and Biology respectively. It is stated that the Petitioner completed the MD (Physician) course in the Daghestan State Medical Academy between 1994 and June 2000. The course was for 6 academic years, the Petitioner completed a one-year internship and consequently became entitled to grant of permanent registration in India in terms of Section 13(3) of the Act.

5. Several seniors of the Petitioner who had passed the said preparatory test in Medical Institutes of the States forming part of the erstwhile USSR were refused grant of provisional/permanent registration by the MCI. Their petitions were heard in the various High Courts and some of them were granted reliefs. In the appeal filed by the MCI i.e. Medical Council of India v. Indian Doctors from Russia Welfare Association, the Supreme Court delivered a judgment on 8th March 2002 in which a one-time exemption was granted to all such persons provided that they applied for registration before 15th March 2001.

6. The Petitioner states that he came to India and applied to the MCI for grant of provisional registration in October 2000. He got all his requisite documents attested on 29th September 2000 and got a demand draft for Rs. 500/- in favour of MCI ready on 3rd October 2000. Thereafter he went to MCFs office on 6th October 2000 to submit his application. It is stated that when he submitted his duly filled up application form at the specified counter of the MCFs office, the dealing official upon verifying the application form of the Petitioner saw that he had secured less than 50% marks in the +2 examinations in Physics, Chemistry and Biology. The dealing official then told the Petitioner that they had been directed by MCI not to accept the application form of a person who did not fulfil the minimum eligibility criteria. He also informed the Petitioner that a case in respect of students who had secured less than 50% marks in the plus two examination was pending before the Supreme Court and that till the time the case was decided, the Petitioner's application for registration would not be accepted. The Petitioner was asked to meet Mr. Rahi, the then Secretary of the MCI who also informed the Petitioner that since there was a case pending before

the Supreme Court, the Petitioner's application form for registration could not be accepted. In proof of having made a demand draft of Rs. 500/- on 3rd October 2000 the Petitioner has produced certificate dated 4th February 2003 issued by the Central Bank of India from where the said draft was got prepared.

7. Mr. Manoj Goel, learned Counsel for the Petitioner refers to an interim order dated 17th April 2000 passed by the Supreme Court in the aforementioned appeal (Medical Council of India v. Indian Doctors from Russia Welfare Associations) which recorded the fact that the General Body of MCI met on 31st March 2000 and resolved, inter alia, that "any student who has obtained less than 50% marks in Physics, Chemistry or Biology in the 10 + 2 examination would not at all be eligible for registration." According to the MCI this was "an absolute imperative in the larger interest of public health." It is stated that consistent with the above resolution, the staff of the MCI did not accept the Petitioner's application for registration when it was sought to be filed by him on 6th October 2000.

8. Mr. Goel then submits that only where the Petitioner suffered at least one disability would there be a requirement to apply for registration before 15th March 2001 for not taking screening test. In the present case if the principle of rounding off applies, the Petitioner's marks in the +2 examination would be treated as 50%. In that event he would not have to seek a one-time exemption or take a screening test. In this regard, he placed reliance upon the judgments of the Supreme Court in State of Uttar Pradesh v. Pawan Kumar Tiwari (2005) 2 SCC 10, and State of Punjab v. Asha Mehta, (1997) 11 SCC 410 , and the decisions of the High Courts in Rajul Arora Vs. Jai Narain Vyas University and Another, , M. Ramprakash v. Pondicherry University [decision dated 29th August 2002 of the Madras High Court in WP No. 10212 of 2001], The Director of Teacher Education v. Joseph Chellamuthu [decision dated 23rd March 2009 of the Madras High Court in Writ Appeal No. 1582 of 2007].

9. On the other hand, learned Counsel for the MCI submits that the minimum qualifying marks of 50% in the +2 examinations is mandatory and no "rounding off of the marks was permissible. That would, according to him, dilute the standards. He further submits that the Petitioner's contention that his application was refused to be accepted by the MCI on 6th October 2000 was not verifiable and, therefore, unbelievable.

10. This Court is of the view that learned Counsel for the Petitioner is right in contending that 49.7% marks obtained by the Petitioner should be considered as equivalent to 50% by applying the principle of "rounding off.

11. In State of U.P. v. Pawan Kumar Tiwari 93 posts of Civil Judge (Junior Division) in the Uttar Pradesh Judicial Service were advertised. For the purpose of providing reservations, certain percentages were worked out for the different categories. The Respondent belonged to general category. In terms of the number of posts, the percentage reserved for the general category worked out to

46.50% as against 50%. The Respondent who was at the top of the waiting list in the general category was denied an appointment. He contended that if the percentage of 46.5% would have been rounded off to 47% then he would have been accommodated. The High Court accepted the said contention and held that 46.5% should have rounded off to 47%. This view was upheld by the Supreme Court. It was explained in para 7 as under (SCC, p. 12):

7. ...The rule of rounding off is based on logic and common sense is: if part is one half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment.

12. In *State of Punjab v. Asha Mehta* the question was whether 32.5% marks could be rounded off to 33%. The Supreme Court answered it in the affirmative and observed (SCC p. 410-411):

The question whether 32.5% could be rounded off to 33% is purely an arithmetical calculation, a procedure which the Public Service Commission in fairness has been adopting in all other cases. The High Court noticed this aspect of the matter and also relied upon earlier procedure in support thereof. In that view of the matter, we do not think that it is a fit case for interference under Article 136 of the Constitution.

13. In *Rajul Arora v. Jai Narain Vyas University*, the learned Single Judge of the Rajasthan High Court held that 44.83% should be rounded off to 45% and the candidate ought not to be deprived of admission to the LL.B. course. Likewise, in *M. Ramprakash v. Pondicherry University* where the minimum qualification for admission to the B. Tech Course was 50% in the qualifying examination and the Petitioner had secured 49.66%, it was held that these marks must be rounded off to 50%. In *Joseph Chellamuthu Teacher Training Institute*, the minimum eligibility criteria for admission to the II year Diploma Teacher Education Course was 45% in +2 Examinations. The candidate had secured 44.8% marks. The High Court of Madras applied the principle of rounding off and held that the candidate's marks should be rounded off to 45%. Likewise in *Dharmendra Kumar Shrivastava Vs. Jiwaji University, Gwalior*, 49.77% marks were rounded off to 50%.

14. In view of the settled position in law as explained in the above decisions of the Supreme Court as well as the High Courts, it appears that there is no merit in the contention of the MCI that the 49.7% marks secured by the Petitioner in +2 examinations should not be permitted to be rounded off to 50%.

15. Consequently, there is no disability that comes in the way of the Petitioner being granted registration. There is therefore no need to consider whether the Petitioner satisfies the requirements spelt out in para 6 of the decision of the Supreme Court in *MCI v. Indian Doctors from Russia Welfare Associations* which

reads as under:

6. In order to regulate the grant of registration to such persons who have completed their degree abroad prior to March, 15, 2001, the following guidelines are placed before this Court by the Government of India:

(A) The case of all persons who applied for registration to MCI prior to 15.3.2001 shall be dealt with according to the provisions of the Act as existing prior to the commencement of the IMC (Amendment) Act, 2001 subject to the following:

(i) Those students who obtained degrees where the total duration of study in recognised institutions is less than six years (i.e. where a part of the study has been in unrecognised institutions, or the total length of study in a recognised institution is short of six years), shall be granted registration by MCI provided that the period of shortfall is covered by them by way of additional internship over and above the regular internship of one year. In other words, for such categories of students, the total duration of study in recognised institution plus the internship, would be seven years, which is the requirement even otherwise.

(ii) Where students who did not meet the minimum admission norms of MCI for joining undergraduate medical course, were admitted to foreign institutes recognised by MCI, this irregularity be condoned. In other words, the degrees of such students be treated as eligible for registration with MCI.

(B) All students who have taken admission abroad prior to 15.3.2002 and are required to qualify the Screening Test for their registration as per the provisions of the Screening Test Regulations, 2002 shall be allowed to appear in the Screening test even if they also come in the categories of circumstances contained in A(ii) above, as the relaxation contained therein would also be applicable in their case. In other words, any person at present undergoing medical education abroad, who did not conform to the minimum eligibility requirements for joining an undergraduate medical course in India laid down by MCI, seeking provisional or permanent registration on or after 15.3.2002 shall be permitted to appear in the Screening Test in relaxation of this requirement provided he had taken admission in an Institute recognised by MCI. This relaxation shall be available to only those students who had taken admission abroad prior to 15.3.2002. From 15.3.2002 and onwards all students are required to first obtain an Eligibility Certificate from MCI before proceeding abroad for studies in Medicine.

16. The stand of the MCI is that the Petitioner suffered from a disability inasmuch as he did not have 50% marks in the +2 examinations. The contention is that if he seeks a one-time exemption for this disability and does not wish to take the screening test, then he should have applied for permanent registration prior to 15th March 2001. In the instant case since the Petitioner did not submit the application form for registration prior thereto, he was not eligible.

17. As already held that the Petitioner does not suffer from any disability. He

should be considered as having been obtained 50% marks in the +2 examination. Therefore, the question whether the Petitioner had submitted his application form for registration prior to 15th March 2001 need not be examined.

18. Nevertheless, this Court is satisfied that the Petitioner had approached the office of the MCI with the completed application form for registration on 5th October 2000 as stated by him. There is no reason to disbelieve the certificate issued by the Bank. It states that the Petitioner did get the demand draft of Rs. 500/- in favour of MCI on 3rd October 2000. It is not disputed that Mr. Rahi was with the MCI at the relevant time. It is possible that the Petitioner did meet him. Therefore, it is plausible that Mr. Rahi refused to accept the Petitioner's application in view of the stand taken by the MCI before the Supreme Court regarding the inviolability of the rule requiring a minimum of 50% marks in +2 examinations. Therefore, on both grounds the Petitioner is entitled to succeed.

19. It is then submitted by the learned Counsel for the MCI that the Petitioner has not practised as a medical practitioner at all for 10 years. Therefore, unless there is some training given to the Petitioner it may be difficult to permit him to immediately start practising as a doctor. Learned Counsel for the Petitioner fairly submits that the Petitioner is prepared to undergo an extra period of internship. It is submitted that the Petitioner could undergo a one-time internship for an extended period of two years.

20. Having considered the submissions of learned Counsel for the parties, it appears to this Court that while the MCI cannot possibly deny registration to the Petitioner on the ground that he has not obtained 50% marks in +2 Examinations, which in fact he has on applying the principle of rounding off, the MCI is justified in insisting that the Petitioner should complete an internship as a pre-condition to the grant of such registration. Therefore, while the MCI will not require the Petitioner to undergo a screening test, the MCI will be justified in incorporating a pre-condition to the grant of registration that the Petitioner should undergo an internship of two years under the supervision of a senior doctor with not less than 20 years standing who will assess the performance of the Petitioner during this period and certify his competence to practice as a full-fledged doctor at the end of internship. The MCI will be flexible on whether the entire internship should be with the same doctor. Within two weeks of such certificate of successful completion of internship by the senior doctor(s), the MCI will issue the necessary order or certificate granting registration to the Petitioner.

21. With the above directions, the petition is allowed with costs of Rs. 5,000/- which will be paid by the MCI to the Petitioner within a period of four weeks from today.

22. The petition and the pending applications are disposed of.