
(2004) 06 MP CK 0005
In the Madhya Pradesh High Court
Case No : Writ Petition No. 28437 of 2003

Dr. Shahina Bano

APPELLANT

Vs

The State of M.P. and Others

RESPONDENT

Date of Decision : 25-06-2004

Acts Referred:

Indian Medical Council Act, 1956 — Section 33

Citation : (2005) 1 MPJR 367

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : Mrigendra Singh, for the Appellant; Sanjay K. Agrawal, G.A. for respondents 1, 2 and 4 and Smt. Indra Nair with Mr. Sandeep Aole, Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.K. Lahoti, J.

This petition is directed for issuance of writ against the respondents to change the course of the petitioner from Diploma in Medical Radio Diagnosis (DMRD) to Doctor of Medicine (in short M.D.) Radio Diagnosis at Medical College, Jabalpur.

Facts of the case are that the petitioner who has passed M.B.B.S. in the year 2002 with merit appeared in Pre-Post Graduate Examination 2003 for admission conducted by the Professional Examination Board. The petitioner was placed at Srial No. 157 in the merit-list of unreserved category in open quota. Petitioner thereafter appeared in counselling and opted D.M.R.D. at Medical College, Jabalpur as per availability of the course/seat at the time of counselling. One Dr. Mahendra Badole was also allotted M.D. (Radio Diagnosis course) at Medical College, Jabalpur. Petitioner and Dr. Mahendra Badole both joined their respective course. Subsequently, Dr. Mahendra Badole resigned from the course and the seat fell vacant. The petitioner applied for the change of her course from D.M.R.D. to M.D. course in the same Medical College, Jabalpur because the seat

vacated by Dr. Badole was not allotted to anybody and is still lying vacant. The contention of the petitioner is that the aforesaid prayer of the petitioner has not been considered by the respondents so far. The petitioner is entitled for the seat fell vacant because of resignation by Dr. Badole. The change of course from D.M.R.D. to M.D. is permissible as per the decision of this Court in Dr. S. Nitin vs. State of M.P. and another (Writ Petition No. 1520 of 2002) decided on 2.12.2002 and the respondents erred in not permitting the petitioner to join M.D. course in the same Medical College. The aforesaid change is permissible under the Rules namely; Medical and Dental Post Graduate Entrance Examination Rules, 2003 (hereinafter referred to as the Rules). Under Rule 16.4 of the Rules, though there is restriction that a candidate so admitted to a particular subject/course and college will not be entitled for any change on any ground. Contention of the petitioner is that if the petitioner is permitted to continue with M.D. course, it will not be a change of course and college, and the petitioner may be permitted to continue the same subject course and in the same college if the aforesaid permission is granted by the respondents. On previous occasions, the State Government has permitted the same as is apparent from perusal of Annexures P/8, P/9 and P/10 on 14th June 2002, 27th November 2002 and 20th December, 2002. The petitioner was entitled for the same treatment by the respondents. The seat in M.D. course is lying vacant at Jabalpur where the petitioner is studying in diploma course and if the aforesaid seat is allotted to the petitioner, it will not violate the Rule 16.4. Reliance is placed to Single Judge judgment of this Court in Dr. S. Nitin's case (supra) in which in similar circumstances, the High Court granted such permission.

The learned counsel appearing for respondents opposed the prayer on the ground that the aforesaid change is not permissible under Rule 16.4 of the Rules. It will amount "change of course" and is specifically prohibited under the Rules. He has placed his reliance to the Apex Court's judgments in Dr. Subodh Nautiyal Vs. State of U.P. and others, ; Medical Council of India Vs. Sarang and Others, ; Medical Council of India Vs. Madhu Singh and Others, ; & State of

The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others, and contended that in view of the specific directions of the Apex Court in Madhu Singh (supra) this petition may be dismissed. It is also contended that the Division Bench of this Court in Dr. Paramjeet Gambhir (W.P.No.5834/2002) decided on 11.11.2002 held that on the basis of the seat falling vacant after the counselling, no fresh counselling may be directed and only persons from waiting list shall be entitled for the seat. In the present case to allot the seat, fresh counselling has to be convened which is not permissible at this juncture.

Though the learned counsel appearing for the parties have argued the matter on different aspect also, but the controversy involved in this case is a very short one: whether the petitioner may be allotted M.D. seat in the same subject and course in which the petitioner is at present prosecuting her studies but as a student of diploma course. The Single Bench of this Court in Dr. S.Nitin (supra)

considering similar circumstances held:

12. Post Graduate Medical Education Regulations, 2000 are framed by the Medical Council of India with the previous sanction of the Central Government. Regulation 10 provides for the period of training. The regulation 10 of Regulations of 2000 is quoted below:

10. PERIOD OF TRAINING

The period of training for the award of various postgraduate degrees or diplomas shall be as follows :

(i) Doctor of Medicine (M.D.)/Master of Surgery (M.S.)

The period of training for obtaining these degrees shall be three completed years including the period of examination;

Provided that in the case of students having a recognized two year postgraduate diploma course in the same subject, the period of training, including the period of examination, shall be two years.

The proviso to regulation 10(1) of MCI Regulation, 2000 makes it clear that in case of students having a recognised two year postgraduate diploma course in the same subject, the period of training, including the period of examination, shall be two years instead of three completed years. Thus, the Medical Council of India Regulation provides for giving relaxation of one year to the students having completed their diploma course in the same subject. The course of MD/MS in such a case is of duration of two years.

The two communications R/3 and R/4 of MCI placed on record in WP1522/2002; they are quoted below in extenso :

Medical Council of India. Dt. 7.7.2001.

Sub: Exemption of one year period for holders of recognised postgraduate diploma for the training of postgraduate degree course effective date of implementation regarding. Sir/Madam,

I am to state that the Postgraduate Committee of this Council at its meeting held on 12.6.2001 considered the various representation regarding effective date of exemption in the training period of the postgraduate degree course for holder of postgraduate diploma qualifications. The Committee decided as under which I am directed to convey forthwith for your information and necessary action :

The Postgraduate Committee considered the number of representations/requests received from various individual institutions and noting that any provisions of the regulations are to be effective prospectively; decided that the effective date of exemption of one year period for holders of recognised postgraduate diploma who undertake postgraduate degree course in the same subject would be from the date of Gazette Notification i.e. 7th October, 2000.

Yours faithfully, (Dr. P. Kumar) Deputy Secretary Dt. 21.12.01

The Director of Medical Education., Satpura Bhawan, 6th Floor, Bhopal-462 004.

Sub : Migration of postgraduate diploma holder students into postgraduate degree course-relaxation in degree course.

Sir,

Kindly refer to your letter No. 10976/4/PG/2001, dated 1.12.2001, on the subject noted above, this is to inform you that as per regulation of the Council on "Postgraduate Medical Education" that the period spent in the diploma course before changeover to respective degree course be considered/counted towards duration of the P.G. degree course provided the changeover has been in the first academic year of the degree course.

Yours faithfully, (Dr. P. Kumar) DEPUTY SECRETARY

It is apparent from R/3 quoted above that one year exemption is available after 7th October, 2000 to the students possessing recognised postgraduate diploma. Letter R/4 dated 21.12.2001 clearly provides that period spent in diploma course before changeover to respective degree course be considered/counted towards duration of the P.G. degree course provided the changeover has been in the first academic year of the degree course. I find no contrary intendment in regulation 10 framed by the MCI, than as mentioned in communication R/4. On switch over in 1st academic year the period spent in diploma course can be counted towards the degree course.

Shri R.S. Jha, learned counsel appearing for respondents 1 to 3 has placed reliance on regulation of 1993 framed by Medical Council of India; relevant portion of the same is quoted below :

Period of Training

The prescribed minimum period of training for the award of various postgraduate degree/diploma shall be as follows :

M.D./M.S.

From the year 1993 onwards, the minimum period of training for obtaining these degree shall be three calendar years and the candidates can be admitted to this training after their full registration with the Medical Council (s).

No exemption shall be given from this period of training of 3 years either for doing Housemanship or for any other experience or diploma.

The said regulation is of no help as Medical Council of India has itself framed the new regulation in 2000 which provides for relaxation of one year and based thereupon the communication R/4 quoted above was made for counting of the period spent in 1st year diploma course towards the degree course. There is a change in the regulation made by Medical Council of India in the year 2000.

Thus, regulation of 1993 cannot prevail; moreover in the instant case not only there is a decision X-1 taken by the Deans of the various medical colleges for counting the period, but the same is also provided in the Rules for admission framed by the Professional Examination Board approved u/s 33 of Medical Council Act, 1956 by Govt. of India as mentioned in the admission rules 1999; relevant portion quoted above indicates that one year relaxation is permissible in the duration of degree course in case "Housemanship" or "equivalent training" has been done. Thus, as per admission Rules, 1999 also in the duration of training for PG course the maximum exemption can be granted up to the period of one year. In the instant case, comparative chart has been filed by respondents 1 to 3 along with affidavit of Dr. G.W. Lanke, Asstt. Professor in Statistics and Demography, SS Medical College, Rewa; in that only difference pointed out is about the difference in teacher students ratio, duration of degree and diploma course in degree course there is requirement of submitting the thesis which is not there in the diploma course. There is no research work in diploma course; study of recent advance has to be undertaken by a student on his own volition only review and journals are also to be read. Such studies are not mandatory in diploma course. There is difference in examination system for degree; following difference has been pointed out in R/1. R/1 filed with the affidavit dated 21.10.2002 is quoted below :

Annexure R-I

S. No.

Degree (M.D./M.S.)

Diploma

As per the M.C.I. Norms Teacher Student ratio is 1:1 for degree course

As per the M.C.I. Norms Teacher Student ratio is 1:2 for diploma course.

Duration of degree course is three years

Duration of diploma course is two years

In degree course includes writing of thesis, which should be submitted 6 month prior to appearing theory and practical examination.

In diploma course no thesis work is allotted.

In degree course student spend first year in setting up research work, collection of references etc.

No research works in diploma course.

Study of recent advances annual reviews and journals are mandatory.

Such studies are not mandatory.

Examination pattern for degree course is extensive and exhaustive which

includes M.D. Part I thesis and Part II theory and practical with viva vocae. There are four papers in theory.

Examination pattern for diploma does not include Part I. Theory examination includes only three papers.

A set of four examiners conduct the examination.

A set of three examiners conduct the examination.

No marksheet is issued to candidate as it is an award to certify that the candidate has satisfied the examiners to pass the exam.

Marksheet is issued to the candidate.

As per M.C.I. Regulation a medical teacher (Assistant Professor and above) should hold a post Graduate Medical Degree.

Diploma holder cannot become a teacher (Assistant Professor and above) in Medical Colleges.

From the above, it is clear that except the difference in teachers students ratio, duration of the course, submission of thesis which is in addition is required in degree course and there is some change in examination pattern; no difference has been pointed out by the respondents in the Ist year of the training of the diploma course and training obtained in the Ist year of degree course. On the contrary Admission Rules, 1999 provides for counting of one year of Housemanship" or "equivalent training." The training obtained in "diploma course" is "equivalent training" to one which is imparted in Ist year of the degree course of same subject. There is no substantial difference pointed out or urged by the respondents before this Court. Thus, the respondents are bound by the Admission Rules of 1999 which have the statutory force and the decision taken by the Deans of Medical Colleges of M.P. is in tune with the admission Rules and the recommendation and regulation 2000 of the Medical Council of India also provides for relaxation of one year to a diploma holder if he is admitted to a post graduate course in the same subject. Relaxation is given of one year to such a candidate. The petitioners in the instant cases are claiming exemption to the extent of one year not beyond that.

Thus, in my opinion, the petitioners are entitled for relaxation to the extent of maximum one year spent by them in the same subject in the diploma course; that has to be counted towards the degree course.

Smt. I. Nair, learned senior counsel appearing for the Medical Council of India has also fairly stated that there does not appear to be any substantial difference in the 1st year training and one year relaxation is granted to diploma holders towards the degree course. I do not find anything in regulation 10 of the MCI Regulation, 2000 prohibiting the counting of period of one year spent in diploma towards the degree course. Letter R/4 of MCI supports the said formation of opinion.

Shri R.S. Jha, learned Dy. Advocate General has relied on decision of the Apex Court in Director, Medical Education, Lucknow and others v. Dr. Swapnil Chauhan 2000 (2) SLR 644. The Apex Court considered the regulation quoted above of the year 1993 and held

in para 4 and 5 that :

4. According to learned counsel for the respondent since the study course of Diploma (G & O) and M.S. (G&O) is to a great extent identical and she was already preparing her thesis, she should be permitted to appear in the examination for M.S. (G&O) as she had got admission in M.S.(G&O) course pursuant to the directions of the High Court with effect from 29th March, 1996 and had also pursued the diploma course. The argument is misconceived. The respondent continued to study in M.S. course only till 4th January, 1997 whereafter because of the stay order granted by this Court, she was not permitted to pursue that course. She has, therefore, not even put in one year course of study in M.S. According to the Medical Council of India the minimum period of training for the award of M.D./M.S. course from the year 1993 onwards is three calendar years, the relevant provision reads :

PERIOD OF TRAINING

The prescribed minimum period of training for award of various post-graduate degree/diploma shall be as follows :

1. MD/MS, from the year 1993 onwards the minimum period of training for obtaining these degrees shall be three calendar years and the candidates can be admitted to this training after their registration with the Medical Council of India.

No exemption shall be given from this period of training of three years either for doing housemanship or for any other experience of diploma

The above provision makes it abundantly clear that no credit can be given to the respondent for the period of study for Diploma for obtaining M.D./M.S. Three calendar years' minimum training is an essential requisite for the award of postgraduate degree of M.D./M.S. which the respondent does not possess. That being the position the request of the respondent is wholly untenable.

The regulation 10 framed in 2000 by MCI now is totally different which is applicable in the case, thus, the said decision is of no use; more so in view of the Rules of admission, 1999 which has been approved by the Govt, of India. Similar provision did not come for consideration in Dr. Swapnil Chauhan (supra).

Shri Jha has also relied on Medical Council of India Vs. Sarang and Others, . Regulation 6(5) of Medical Council of India on regulation of Graduate Medical Education, 1997 came for consideration. Regulation 6(5) provides that a student will pursue 18 months of prescribed study before appearing for the IInd professional medical examination. The Apex Court held that regulation requiring completion of 18 months study in the college from which the student wants to

appear in the examination is appropriately insisted upon. Migration is not normally allowed. The decision is rendered in different context and is of no assistance to the argument advanced by Shri Jha.

Shri Jha has also relied on Dr Preeti Srivastava and Another Vs. State of M.P. and Others, to contend that regulations framed by the Medical Council of India be followed in the matter of Higher Education. There is no dispute with the proposition, but the entrance Rules framed by the Professional Examination Board for the examination of 1999 provides for relation of one year in degree course which is also now provided by the MCI as per regulation 10 of Regulation 2000 though for diploma holders, but there being no difference in the Ist year diploma and degree course, in my opinion, as per condition mentioned in the admission Rules, 1999 which has been approved by the Govt. of India under the Medical Council Act, 1956 have the statutory force and petitioners are entitled to relaxation of one year.

Resultantly the writ petitions are allowed. The respondents are directed to count the period spent by petitioners in diploma course to the maximum of one year for constituting 36 months of PG degree course in the same subject. Petitioners were allowed to appear in the examination under the interim orders passed by this Court. However, this court ordered results not to be declared, their results be declared, in view of fact that writ petitions have been allowed. No orders as to costs.

5. The learned Single Judge considering all the Rules held that the aforesaid change is permissible and both the courses in the Ist year are same and if in the Ist year a student has prosecuted the diploma course, then the student is at par vis-a-vis the student who is prosecuting studies in degree course. At present, the seat of M.D. course is available in the college of respondent no. 4 where the petitioner is studying in diploma course. Now the question remains whether at present petitioner may be permitted to allot M.D. seat which is lying vacant and whether it will violate Rule 16.4 of the Rules, which reads as under:

16.4 A CANDIDATE SO ADMITTED TO A PARTICULAR SUBJECT, COURSE AND COLLEGE WILL NOT BE ENTITLED FOR ANY CHANGE ON ANY GROUND.

The aforesaid Rule provides that a candidate so admitted to a particular subject, course and college will not be entitled for any change on any ground. So far subject and College are concerned, it is not disputed before me that the subject is same and the college is same where the petitioner is prosecuting her studies in the same subject and in the same college. Now the only question remains whether change of diploma to degree will amount to a change of course or not? So far as this point is concerned in Dr. S. Nitin (supra) considering both the courses found that in the Ist year the syllabus remains same. The diploma course is two years" course while the degree course is three years" course. The Ist year course syllabus is identical in both the situations. As at present, the degree seat is available in the same college in the same subject and the petitioner is claiming

aforesaid degree seat for prosecuting better studies and there is no other claimant for the seat, then the aforesaid change is permissible and will not violate Rule 16.4 of the Rules because the syllabus still remains the same. In the aforesaid circumstances, when a degree seat is available in the same course and in the same college, then the petitioner may be permitted to prosecute her studies in degree course.

In the peculiar facts and circumstances of the case, the judgments relied on by the learned counsel for respondents are not applicable.

In view of the aforesaid, this petition stands allowed. It is directed that the respondents shall permit the petitioner to prosecute her studies in M.D. (Radio Diagnosis) course from the Session 2004-05 and the one year period in which the petitioner has prosecuted her studies as a student of Diploma course shall be given due adjustment in the Degree course.

No order as to costs.