

(2006) 03 KAR CK 0111
In the Karnataka High Court
Case No : Writ Petition No. 34763 of 2004

Dr. Y.K. Nagarajaiah

APPELLANT

Vs

The Vice-Chancellor, Kuvempu University and Others

RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Indian Medical Council Act, 1956 — Section 26 (1)

Citation : (2006) 3 KCCR 142 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : R.B. Sadasivappa, for the Appellant; T.P. Rajendra Kumar Sungay, for Respondent Nos. 1 and 2 and M.R. Naik, for the Respondent

Judgement

N.K. Patil, J.—In the instant case, petitioner assailing the correctness of the impugned endorsement dated 16th/17th March, 2004 issued by second respondent vide Annexure-G, has presented the instant writ petition. Further, he has sought for a direction, directing the respondents 1 and 2 to issue the correct certificate mentioning as M.D. (Radio-Diagnosis) in place of M.D. (Radiology).

2. The grievance of the petitioner in the instant writ petition is that, petitioner has been deputed by the Government for study of M.D. in Radio-Diagnosis at J.J.M. College and accordingly, he joined M.D. in Radio-Diagnosis at J.J.M. Medical College, Davanagere and then qualified for M.D. in Radio-Diagnosis in March 1997. Thereafter, he served as a specialist in Megunn Hospital, Shimoga for three years and from the year 2000, he has been serving as senior specialist at Tumkur District Hospital. To substantiate his case that, he was studying M.D. in Radio-Diagnosis at J.J.M. Medical College and not M.D. in Radiology, he has produced the Masters Degree Examination Admission Ticket in respect of M.D. (Radio-Diagnosis) issued by the Principal and Chief Superintendent of the third respondent-College bearing Reg. No. 96732, In the said admission ticket, as the second column, it has been specifically mentioned as M.D. (Radio-Diagnosis) vide Annexure-A. Further, from the dissertation submitted by the petitioner to the

faculty of medicine, Kuvempu University in partial fulfillment of the Regulation for the Award of M.D. Degree in (Radio-Diagnosis) Examination to be held in the month of March 1997 vide Annexure-B, it can be seen that, the dissertation is submitted in respect of award of Masters Degree in Radio-Diagnosis. Be that as it may.

3. The third respondent-College has issued the pass certificate dated 7th May, 1997 vide Annexure-C, stating that, petitioner was a bona fide post-graduate student in Radiology during June 1994 to March 1997 and has passed M.D. Radiology Examination held in March 1997 in first attempt vide Reg. No. M. Md. 96732 conducted by Kuvempu University. Thereafter, the University has also issued the Masters Degree Certificate vide Annexure-D, as M.D. (Radiology) instead of M.D. (Radio-Diagnosis). Further, learned Counsel appearing for petitioner placed reliance on the communication dated 16th/17th March, 2004 vide Annexure-G issued by the University to petitioner wherein it is stated that, petitioner has been admitted for M.D. in Radiology and accordingly a certificate to that effect has been issued and there is no provision to change the same. He also placed reliance on another communication dated 27th November, 2003 issued by the Medical Council of India vide Annexure-F regarding additional qualification u/s 26(1) of the Indian Medical Council Act, 1956 wherein it is stated that, the M.D. (Radiology), 1997 medical qualification granted by Kuvempu University in respect of students trained at J.J. Medical College, Davanagere is not included in the Schedule to the Indian Medical Council Act, 1956, but, Post-graduation qualification by the nomenclature of M.D. (Radio-Diagnosis), 1997 qualification granted by Kuvempu University in respect of students trained at J.J. Medical College, Davanagere is recognised by the Council and included in the Schedule of the Indian Medical Council Act, 1956. Accordingly, petitioner made a request to the respondent-University, to issue the revised Masters Degree Certificate by changing the present Masters Degree Certificate in respect of M.D. (Radiology) to M.D. (Radio-Diagnosis), by placing heavy reliance on Masters Degree Certificate issued by respondents 1 and 2-University in favour of two other doctors namely, Dr. Srinivasa Babu C.R. for the Examination held in 1994 and Dr. Kiran Kumar Hegde S. for the Examination held in 1998 vide Annexures-H and J and specifically contended that, the said two other doctors were also issued the Certificate stating that, they had completed the Master's Degree in Radiology, but subsequently, on he basis of the representations given by the said doctors, viz., Dr. Srinivasa Babu C.R. and Dr. Kiran Kumar Hegde S., the University has issued the revised Degree Certificates, by correcting the mistake that had crept in. Therefore, he contended that, the impugned endorsement issued by University is without verification and without affording an opportunity to petitioner. If the University had afforded an opportunity to petitioner, petitioner might have substantiated his case by producing these two documentary evidence, as stated supra. Having regard to this background, petitioner herein felt necessitated to present the instant writ petition, assailing the correctness of the impugned endorsement dated 16th/17th

March, 2004 vide Annexure-G.

4. I have heard learned Counsel appearing for petitioner, learned Counsel appearing for University and learned Counsel appearing for third respondent. After careful evaluation of the entire original record available on file, it is not in dispute that, the admission ticket vide Annexure-A issued by the Principal and Chief Superintendent of the third respondent-College is for Master Degree Examination in respect of M.D. (Radio-Diagnosis) and the thesis/dissertation vide Annexure-B submitted by petitioner is also in respect of M.D. (Radio-Diagnosis), It can further be seen that, the Medical Council of India by its communication dated 27th November, 2003 vide Annexure-F to the petitioner, has clarified the fact that, M.D. (Radiology) 1997 medical qualification granted by Kuvempu University is not included in the Schedule to the Indian Medical Council Act, 1956, but the Post-graduate qualification by the nomenclature of M.D, (Radio-Diagnosis), 1997 granted by Kuvempu University is recognised by the Council and is included in the Schedule of the Indian Medical Council Act. 1956. It can further be seen that, the third respondent-College has also forwarded a communication to the University on 21st February, 2004 stating that, from the 1983-84 batch, M.D. (Radio-Diagnosis) has come into existence. Further, learned Counsel for petitioner also placed reliance on the two Certificates issued by the University in favour of Dr. Srinivasa Babu C.R. and Dr. Kiran Kumar Hegde S. vide Annexures-H and J respectively from which it can be seen that, the University has issued the said Certificates as M.D. (Radio-Diagnosis) for the examination held in 1994 and 1998 respectively. When these vital material were very much available on file, the respondent-University ought to have given opportunity to petitioner to substantiate his case that, he is entitled for issuance of revised Masters Degree Certificate as M.D. (Radio-Diagnosis) instead of M.D. (Radiology) as has been done in respect of two other doctors who have got their certificate rectified after giving representations to the University. The stand taken by the respondent-University in their objections statement that, petitioner was admitted to Masters Degree in Radiology and not M.D. in Radio-Diagnosis, cannot be appreciated. If that is so, nothing prevented the respondent-University from issuing notice to petitioner and passing a speaking order by assigning cogent reasons, after affording an opportunity of hearing to petitioner and conducting the enquiry. Such action by the University would have been definitely appreciated. But in the instant case, after careful evaluation of the material available on record, the grounds urged by petitioner and the stand taken by University, in my considered view, the matter requires reconsideration by the University, to re-do the matter afresh and to take the appropriate decision in accordance with law and the existing regulations of the respondent-University, however, subject to thorough verification of the Certificates issued to two other doctors vide Annexures-H and J respectively, who are similarly placed like the petitioner herein. Further, it is also open for the University to call for explanation from the third respondent-College regarding the same and if it is the case of College that, they have already sent a communication to the respondent-

University on 21st February, 2004 vide Annexure-E, and if the said communication is not available before the University, then, it is open for the University to call for fresh clarification from the third respondent-College.

5. Having regard to the facts and circumstances of the case, as stated above, the impugned endorsement issued by the University dated 16th/17th March, 2004 vide Annexure-G cannot be sustained.

6. For the foregoing reasons, the writ petition filed by petitioner is allowed. The impugned endorsement dated 16th/17th March, 2004 vide Annexure-G issued by the second respondent-University is hereby set aside and the matter stands remitted back to second respondent for reconsideration afresh in accordance with law and to take appropriate decision, after affording an opportunity to petitioner, as expeditiously as possible, at any rate, not later than six months from the date of receipt of a copy of this order.

7. With these observations, the writ petition filed by petitioner stands disposed of.