

(2014) 01 DEL CK 0374

In the Delhi High Court

Case No : LPA 70 of 2014, CM No's. 1451, 1452, 1453, 1454 and 1455 of 2014

Medical Council of India

APPELLANT

Vs

Prashant Kumar Gupta and Another

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Indian Medical Council Act, 1956 — Section 10A 10-A 13(4A) 25(1)

Citation : (2014) 2 AD 519

Hon'ble Judges : Nuthalapati Venkata Ramana, C.J;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Maninder Singh and Mr. T. Singhdev, for the Appellant; Sunil Kumar and Mr. Rajiv Ranjan Mishra for R-2/UOI, for the Respondent

Final Decision : Dismissed

Judgement

1. This intra court appeal impugns the judgment dated 30th September, 2013 of the learned Single Judge of this Court in W.P. (C) No. 6452/2012 preferred by the respondent no. 1 (respondent no. 2 is the Union of India) directing the appellant to grant provisional registration u/s 25(1) of the Indian Medical Council Act, 1956 to the respondent no. 1 in case he had passed the Screening Test held on 25th March, 2012. The counsel for the respondent no. 2 Union of India appears on advance notice. We have heard the senior counsel for the appellant at length.

2. The respondent no. 1, after obtaining Eligibility Certificate from the appellant under The Eligibility Requirement For Taking Admission In An Undergraduate Medical Course. In A Foreign Medical Institution Regulations 2002, acquired doctor of medicine (MD Degree) from Khazar University, Baku, Azerbaijan, equivalent to the MBBS degree in India and underwent the Screening Test conducted by the National Board of Examinations, Ministry of Health & Family Welfare under The Screening Test Regulations, 2002 and successfully passed the same. However the appellant still refused to grant provisional registration to the respondent no. 1 u/s 25(1) of the Act to enable the respondent no. 1 to undergo practical training and whereafter the respondent no. 1 would be entitled to

practice medicine, on the ground that the foreign University from which the respondent no. 1 had acquired the foreign medical qualification was, earlier, without obtaining any approval u/s 10A of the Act was having its off campus in India in the name and style of Sidhant Institute of Medical Services and Research and the respondent no. 1 had been admitted for first year of his medical course in such off campus of the foreign University at India.

3. The learned Single Judge has found the denial by the appellant of provisional registration to the respondent no. 1 on the aforesaid ground to be contrary to the law laid down in Medical Council of India Vs. J. Saai Prasanna and Others etc. etc., and hence has allowed the writ petition. The Supreme Court in the said judgment, in paras 10 to 14, has held as under:-

10. MCI contends that where student of a foreign University undergo a part of his training in an Institution in India which has not obtained the permission from the Central Government/MCI, as required u/s 10A of the Act, such students are not eligible for registration as medical practitioners in India. The requirements for recognition of a medical qualification granted by a medical institution outside India are different from requirements for recognition of medical qualification granted by Universities or medical institutions in India. It is no doubt true that if a student in India, does a course of study in medicine in a medical college in India which does not have the permission of the Central Government u/s 10A of the Act, the medical qualification granted to any student of that college will not be a recognized medical qualification for the purposes of the Act and consequently such student will not be entitled to be enrolled in the India Medical Register or State Medical Register.

11. But medical qualifications granted by medical institutions outside India are dealt within a special provision, that is, Section 13(4A) of the Act. Necessarily, for examining the validity of the medical qualification granted by a medical institution in any country outside India, the norms and tests of the country where the medical institution is situated, will have to be fulfilled for recognition of the degree in that country and the norms that are prescribed by the Indian Medical Council Act, 1956 in regard to Indian medical institutions will have no relevance. So long as the medical institutions in a country outside India has granted a medical qualification and that medical qualification is recognized for enrolment as medical practitioner in that country, all that is required for the purpose of enrolment in the medical register in India is qualifying in the screening test in India.

12. In the case of persons who obtained a medical qualification in a medical institution outside India, the question as to where the course of study was undergone is not relevant. The course of study could be in that country or if the norms of the Medical Council of that country so permitted, the course of study could be partly in that country and partly in another country including India. Once that country recognizes a medical qualification granted by the institution in that country for the purpose of enrolment as a medical practitioner in that

country, and such medical degree holder passes the screening test in India, the Medical Council of India cannot refuse to recognize such degree on the ground that the student did a part of his study in an Institution in India as a part of his medical study programme for the foreign institution.

13. As stated above, as far as the provisions of the Act at the relevant point of time, all that was required for an Indian citizen holding a medical qualification from a foreign country for being enrolled in the medical register was that he should qualify in the screening test in India. Therefore, the fact that such a medical graduate underwent a part of the medical course of a foreign university, in an Indian college which was not recognized in India, will not be relevant.

14. The learned counsel for MCI submitted that unscrupulous operators in India may commence and conduct courses in unauthorized institutions in India and make the students take their examination in a foreign country to secure a decree outside India and thereafter flood India with inadequately and improperly educated medical graduates, by appearing and passing in the screening test. This apprehension is without any basis as the Screening Regulations have now been amended by the Screening Test Regulations (Amendment), 2010 whereby clause (3) has been added in Regulation 4 to the following effect:

4. (3) He/she has studied for the medical course at the same institute located abroad for the entire duration of the course from where he/she has obtained the degree.

4. The senior counsel for the appellant has contended that the aforesaid dicta of the Supreme Court would not apply to the respondent No. 1/writ petitioner owing to two distinct facts. Firstly it is contended that the Supreme Court in the judgment aforesaid was concerned with the students who had joined foreign medical colleges prior to the coming into force of the 2002 Regulations while the respondent no. 1/writ petitioner joined the foreign medical institution after the coming into force of the 2002 Regulations and under the purview thereof. The second contention is, that the appellant, immediately upon learning of the said foreign University having set-up an off campus in India in the name and style of Sidhant Institute of Medical Services and Research, had informed it that its operations in India were illegal and directed it to close the said college; the said college had filed a writ petition in the Bombay High Court being Writ Petition (Civil) No. 8497/2006 and vide interim order in the writ petition the said college was ordered to be inspected and after receiving the report of the same being totally deficient, the writ petition was dismissed with costs of Rs. 50,000/-. It is argued that in the case aforesaid before the Supreme Court, there was no inspection of the off campus in India of the foreign University where the students in that case had received education.

5. We are unable to find either of the aforesaid two reasons to be of any relevance to make the dicta of the Supreme Court inapplicable to the facts of the present case.

6. The 2002 Regulations, under aegis of which the respondent no. 1/writ petitioner was granted the Eligibility Certificate, did not till the 2010 amendment supra thereto, contain any requirement that the student should study the medical course at the same institute located abroad for the entire duration of the course. The 2010 amendment, introducing the said requirement/condition, came into force after the year 2006 in which the respondent no. 1/writ petitioner obtained Eligibility Certificate and took admission to the off campus in India of the foreign medical institution, though before the respondent no. 1/writ petitioner took the screening test on 25.03.2012. However there is nothing to show that the 2010 amendment is retrospective. The said amendment thus cannot be allowed to affect students, who, prior to the coming into force thereof, joined off campus in India of foreign medical institutions. The senior counsel for the appellant of course has argued that the 2010 amendment supra is only clarificatory, but we are unable to, in the absence of anything to support such contention, hold so. We are thus, unable to accept that the dicta of the Supreme Court in J. Saai Prasanna supra, in the context of students taking admissions to foreign medical colleges before the coming into force of 2002 Regulations, would not apply to the respondent no. 1/writ petitioner, because notwithstanding the 2002 Regulations having come into force, they, till the respondent no. 1/writ petitioner took admission in foreign medical institution in the year 2006, did not contain any such condition/requirement that the student should study at the same institution abroad for the entire duration of the course.

7. As far as the second reason is concerned, the Supreme Court in J. Saai Prasanna was also concerned with students who had undergone the first two terms of 18 months of the medical course at an unrecognized medical college in India. In our view, it will make no difference whether the said unrecognized medical college is issued a notice of closure by the appellant or not or whether such unrecognized medical college is inspected by a team of doctors or not. Rather we have enquired from the senior counsel for the appellant whether the appellant would recognize a medical degree obtained by a student from an unrecognized medical college which had not been issued any notice of closure or which had not been inspected and which had continued to thrive unnoticed. The senior counsel for the appellant fairly admitted that the same cannot be the criteria.

8. It is thus clear that the Supreme Court in J. Saai Prasanna also was concerned with the same facts as are before this Court and we are thus bound by the judgment of the Supreme Court and unable to take a different view for the reasons which have no bearing to the reasoning of the Supreme Court.

9. The senior counsel for the appellant has lastly contended that the learned Single Judge has erred in para 12 of the impugned judgment observing that the appellant cannot regulate the faculty and other infrastructural requirements in a foreign University including an off campus centre of foreign University even if the said offshore campus is situated in India. He has contended that vide Section 10-

A of the Act no medical college can be established without permission of the Central Government.

10. We are in agreement with the aforesaid contention of the senior counsel for the appellant and clarify that no observation in the judgment of the learned Single Judge be construed as in laying down that a foreign University can have an offshore campus in India without seeking permission u/s 10A.

11. The senior counsel for the appellant at the fag-end of the hearing informs that Regulation 4(3) of the Screening Test Regulations, 2002 brought into force vide the 2010 amendment has been held by the judgment dated 27th September, 2013 of the Division Bench of this Court in W.P. (C) No. 1655/2013 titled Rohit Naresh Agarwal Vs. Union of India to be ultra vires the Act and has been quashed and an SLP (C) No. 36956/2013 preferred by the appellant there against has been granted and vide interim order therein the said Regulation 4(3) has been permitted to be enforced by the appellant. Save for the aforesaid, there is no merit in the appeal which is dismissed in limine.

No costs.