
(2018) 03 RAJ CK 0162
In the Rajasthan High Court
Case No : Spl. Appl. Writ No. 455 of 2018

Medical Council of India @APPELLANT@Hash Thakra Ram

Date of Decision : 08-03-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 03 RAJ CK 0162

Hon'ble Judges : GOPAL KISHAN VYAS, J; RAMCHANDRA SINGH JHALA, J

Bench : Single Bench

Advocate : R.S. Saluja, Sukesh Bhati

Final Decision : Dismissed

Judgement

G.K. Vyas, J.

Â The instant special appeal has been filed by appellant- Medical Council of India (for short, hereinafter referred to as "MCI") against the

judgment dated 10th of August, 2017 passed by learned Single Judge in SBCWP No.10943/2015, whereby the learned Single Judge allowed the writ

petition filed by the writpetitioner (respondent No.1 herein) and directed the National Board of Examination to issue passing certificate of FMG

Screening Test, 2015 to the petitioner without insisting upon the eligibility certificate to enable him further to seek registration as a medical practitioner.

It is also ordered that the registering authority too shall not deny the registration on the ground that he did not acquire the eligibility certificate before

seeking admission in a foreign university and directed to complete the entire exercise within a period of one month.Â

Â As per facts of the case, the writ-petitioner/respondent No.1 Thakra Ram, graduated from Lugansk State Medical University, Ukraine after

completing six years course commencing from 2008 to 2014. The said

graduation is equivalent to MBBS Course in India. The said course is recognized by the MCI, however, on return to India after completing his course, the writ-petitioner applied for the examination conducted by the National Board of Examination and participated in the Foreign Medical Screening Test conducted on 29.06.2015. The writ-petitioner/respondent No.1 was declared successful in the said screening test.

Thereafter, the writ-petitioner approached the authorities of the National Board of Examination for issuance of the passing certificate of the FMG

Screening Test, but vide letter dated 10.08.2015 he was informed by the authorities of the National Board of Examination that he is required to get the eligibility certificate issued by the MCI. However, the MCI vide their letter dated 24.09.2009 refused to grant the eligibility certificate for the reason

that his age was below 17 years at the time when he joined the course in the Lugansk State Medical University.Â

Â Aggrieved by the action of MCI, the writ petition was filed by the respondent No.1 whereby he was refused eligibility certificate for the purpose of registration as Medical Practitioner and for pursuing further studies.Â

Â Before the learned Single Judge, appellant- MCI took a plea that as per Regulations framed under the Indian Medical Council Act, 1956 for the

candidates who wish to join the foreign medical institutes for the purpose of obtaining the primary medical qualifications. As per Regulation 4 of the

Regulation of 2012, the Eligibility Requirement for taking admission in an undergraduate Medical Course in a Foreign Medical Institution Regulations,

2002, a candidate is required to obtain the eligibility certificate before proceeding to undertake the studies in a foreign country. The appellants further

pleaded that as per the Regulation 8 of the Regulations of 2002, the Council shall consider the application for eligibility certificate and issue the same

only in case, the said eligibility criteria laid down by the Council is fulfilled. As per Regulation 8, a candidate is required to fulfill the age criteria

prescribed by it and as per council, the age criteria laid down for candidate for seeking admission in the medical examination is required to 17 years of

age on or before 31st of December of the year of admission. But the writ-petitioner/respondent has not completed 17 years of age because at the time

of admission he was 16 years and 7 months. Therefore, the eligibility certificate was not issued, which is in consonance with law. In support of their

reply, judgment rendered in the case of Sanjeev Gupta & Ors. Vs. UOI & Ors. reported in (2005) 1 SCC 45 and in the case of Yash Ahuja & Ors.

Vs. Medical Council of India & Ors. reported in (2009) 10 SCC 313, were brought to the notice of the learned Single Judge. But the learned Single

Judge without considering the regulations and judgment of Honâ??ble Supreme Court, allowed the writ petition, therefore, the instant appeal has been filed.Â

Â Learned counsel appearing on behalf of appellant- MCI vehemently argued that each and every candidate is required to fulfill the eligibility criteria

with regard to age and the respondent No.1 (writ-petitioner) was not fulfilling the eligibility of age because he was only 16 years and 7 months old

when he was admitted in the course at Ukraine. As per judgment of Honâ??ble Supreme Court, no candidate is entitled to get admission without

completing 17 years of age, therefore, the learned Single Judge ought to have considered the aforesaid facts in proper manner, and thus this appeal

deserves to be allowed while setting aside the order passed by the learned Single Judge.Â

Â Per contra, learned counsel for the respondent No.1 submitted that the learned Single Judge has taken care of the all the facts and eligibility criteria

and it is nowhere held by the learned Single Judge that the writ-petitioner was eligible for admission and allowed the writ petition on the ground that he

has completed the course, so also, passed the Screening Test, therefore, equity goes in his favour. The learned Single Judge take note of all the facts

and observed in the order that he has successfully completed the course and he was allowed to undertaken Screening Test, which he cleared,

therefore, while taking a lenient view, the writ petition has been allowed, in which there is no illegality. Learned counsel for the respondent No.1,

therefore, prayed that this appeal may be dismissed.Â

Â After hearing the learned counsel for the parties, it emerges from the facts and finding of learned Single Judge that the writpetitioner/respondent

No.1 was less than 17 years of age on the date of admission, however, he was granted admission at Ukraine, where he has spent his valuable years

for study commencing from 2008 to 2014 and acquired the qualification, which is equivalent to MBBS and recognized by the MCI. There is no dispute

that the respondent No.1/writ-petitioner obtained degree, so also, was declared

successful in the Screening Test but MCI refused to grant him eligibility certificate solely on the ground that he had not completed 17 years of age. The learned Single Judge while taking a lenient view of the fact that now he has acquired the qualification and declared successful in the Screening Test, therefore, it is a case in which MCI is required to issue eligibility certificate for registration as Medical Practitioner. In our opinion, the learned Single Judge exercised its jurisdiction under Article 226 of the Constitution of India.Â

Â As per Article 226 of the Constitution of India, there is jurisdiction of the High Courts to exercise power, if the conscious of the writ courts is satisfied that justice has not been done. Here in this case, there is no doubt that as per the age criteria provided in the Regulations, a candidate must be of 17 years of age, but in this particular case, admission was obtained by the writ petitioner when he was only 16 years and 6 months of age and completed the course and passed the same, therefore, the learned Single Judge exercised its jurisdiction so as to secure ends of justice on the basis of equity and, therefore, it is not proper to interfere in the order impugned passed by the learned Single Judge.Â

Â Consequently, the instant special appeal is hereby dismissed. However, it is made clear that this judgment shall not be treated to be precedent in future.Â