

(2019) 09 BOM CK 0112

In the Bombay High Court

Case No : Writ Petition (St) No. 25074 Of 2019

Miss Anum Bashir Shaikh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 24-09-2019

Acts Referred:

Indian Medicine Central Council Act, 1970 — Section 36(1)(i), 36(1)(j), 36(1)(k)
Constitution Of India, 1950 — Article 226

Citation : (2019) 09 BOM CK 0112

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Patel, J

Bench : Division Bench

Advocate : Rekha Musale, Vikas Mali

Final Decision : Dismissed

Judgement

S.C.Dharmadhikari, J

1. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

2. The petitioner before this Court had claimed a specific relief. In our order of 13th September 2019, we noted the prayer which highlights that relief. That order reads as under:-

"1. The petitioner before this Court has filed this writ petition alleging that she completed Secondary School Certificate Examination (10th standard) with 81.40% of marks and the Higher Secondary Certificate Examination (12th standard) from the Maharashtra State Board with Science stream securing 68.77% of marks.

2. The 2nd respondent/Director of Medical Education & Research and the 3rd respondent/Commissioner of Common Entrance Test Cell (NEET UG-2019) have issued an information brochure containing the Rules & Regulations for admission, and the admission in this case is to the Bachelor of Unani Medicine & Science

Course. Rule 4.11 of these Rules & Regulations requires that the candidate, to be eligible for admission to the BUMS Course, must have passed intermediate (10+2) or its equivalent examination with at least fifty per cent aggregate marks in the subjects of Physics, Chemistry and Biology and the candidate shall have passed 10th standard with Urdu or Arabic or Persian language as a subject, or cleared the test of Urdu of 10th standard (wherever there is provision to conduct of such test). The petitioner proclaims that in her 12th standard examination she had appeared for two language subjects, namely, English and Arabic. In Arabic subject, she secured 92 marks out of 100.

3. However, she did not take this examination, meaning thereby an examination in Arabic subject at 10th standard level. The authorities, therefore, held her as ineligible for admission although she had secured Rank No.828095 at the All India Level and 23712 at the State Level at the NEET UG-2019.

4. The remark that is entered against her application or against the subject column is, one of the language in SSC (for the BUMS) not attempted and therefore, the remark is "None", that means no seat.

5. The petitioner is aggrieved and dissatisfied with this and she says that this remark was not erased or removed despite her detailed application, through her father, copy of which is at Exhibit "E" to the petition dated 18-7-2019.

6. Hence, this writ petition.

7. Reliance is placed and very heavily on an order passed by a Division Bench of this Court on 16-10-2018 in Civil Writ Petition No.11084 of 2018 (Miss Sana Salim Shaikh vs. Union of India & Others).

8. The Division Bench expressed a prima facie opinion that, it is not necessary that the subject Arabic has to be necessarily cleared for this course in both standards, namely, 10th standard and 12th standard. Once the applicant/candidate/petitioner before that Court satisfied the Court that she appeared at the HSC examination conducted by the Maharashtra Board and in Science stream with one of the subjects - Arabic - and secured good percentage of marks therein, then that would suffice.

9. Mr. Mali, learned AGP, appeared on the prior occasion when this petition was circulated before us for urgent relief. We requested Mr. Mali to take detailed instructions. At his instance, this matter was placed today on board.

10. We have found that the Division Bench of this Court, with respect, was given an impression that the requirement of clearing this subject is for both standards, namely, 10th and 12th standards.

11. Mr. Mali would submit that this is not how the Rule would read and the respondents derive no fun in holding the petitioner ineligible, for they have acted in terms of the Regulations which have been framed by an expert body, namely, the Central Council of Indian Medicine. It thought it fit to insert a condition that

the student must have secured minimum percentage of marks in 12th standard with Science subject, however, with a rider that in the 10th standard the student/candidate should have cleared the examination in Arabic. In this case, the present petitioner has admittedly not cleared. Therefore, the Rule would not read, with great respect, as read and interpreted by the Hon'ble Division Bench of this Court passing the order in Sana Salim Shaikh's case (supra).

12. A copy of the Notification notifying the Regulations has been handed in by Mr. Mali.

13. We would like Mr. Mali to place an affidavit, this fact, on the file of this petition so that there is no confusion and chaos in the understanding of the respondents and that of the Court.

14. List on 20-9-2019 under the same caption."

3. After this order was passed, we specifically called upon the petitioner's advocate to take instructions. Having done so, she says that the petitioner maintains her stand that the reading of the regulation as projected in this writ petition is accurate and correct.

4. We take the case of the petitioner as based on a pre-existing and pre-established right, which enables her to contend before this Court that the qualification of 12th standard (Higher Secondary Certificate Examination or HSC) with Arabic language subject fulfils the requirement of eligibility as per Rule 4.11 of the information brochure of National Eligibility-cum-Entrance Test (Under Graduate-2019) (for short, "NEET UG-2019"). That makes her eligible for admission to Bachelor of Unani Medicine and Surgery course ("BUMS course").

5. Now, the State, on prior occasions and today as well, has shown on affidavit how this eligibility criteria has been specified. The State has clarified that this criteria is not introduced by the State in the abstract or in a vacuum or for reasons other than academic. The notification of the Central Council of Indian Medicine, New Delhi dated 7th November, 2016, a copy of which has been annexed, is the foundation for the information brochure containing the stipulation (Rule 4.11).

6. The State maintains that this Central Council has prescribed the eligibility of admission to BUMS course and that states that the candidate must have passed the intermediate (10+2) or its equivalent examination with at least fifty per cent. aggregate marks in the subjects of Physics, Chemistry and Biology and the candidate shall have passed 10th standard with Urdu or Arabic or Persian language as a subject, or clear the test of Urdu of 10 th standard. The relevant part of the notification reads as under:-

"CENTRAL COUNCIL OF INDIAN MEDICINE

Notification

New Delhi, the 7th November, 2016

No.11-76/2016-Unani (U.G.Reg.) In exercise of the powers conferred by clauses (i), (j) and (k) of sub-section (1) of section 36 of the Indian Medicine Central Council Act, 1970 (48 of 1970), the Central Council of Indian Medicine, with the previous sanction of the Central Government hereby makes the following regulations further to amend the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986, namely :-

1. Short title and commencement.- (1) These regulations may be called the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986, for Schedule III, the following Schedule shall be substituted, namely :-

"SCHEDULE III

(See regulation 7)

MINIMUM STANDARDS FOR KAMILE TIB O JARAHAT (BACHELOR OF UNANI MEDICINE AND SURGERY) COURSE

1. Aims and Objects of Unani Education.- To produce competent Unani graduates of profound scholarship, having deep basis of Unani with modern scientific knowledge, in accordance with Unani fundamentals with extensive practical training so as to become Unani Physician and Surgeon and research worker fully competent to serve in the medical and health services of the country.

2. Eligibility for admission.- To seek admission in the respective course of Bachelor of Unani Medicine are as under-

(A) Admission to Kamile Tib O Jarahat course: A candidate seeking admission to main Kamile Tib O Jarahat (Bachelor of Unani Medicine and Surgery-B.U.M.S.) Course must have passed-

(a) intermediate (10+2) or its equivalent examination with at least fifty per cent. aggregate marks in the subjects of Physics, Chemistry and Biology and the candidate shall have passed 10 th standard with Urdu or Arabic or Persian language as a subject, or clear the test of Urdu of 10 th standard (wherever there is provision to conduct of such test) in the entrance examination conducted by the University or Board or registered Society or Associations authorized by the Government to conduct such examination;

....."

(emphasis added)

7. Now the petitioner would urge that this eligibility condition is capable of

'substantial' compliance and that strict compliance is either unnecessary or can be waived, and that waiver can be done either by the authorities or, if they fail to do, by this court. In other words, the petitioner maintains that she has a legally enforceable right, or perhaps even a fundamental right, to such a waiver or dispensation of the strict fulfilment of the condition and to proceed on what she describes as 'substantial' compliance, even if this so-called 'substantial' compliance is wholly and admittedly outside the frame of the rule. Therefore, according to the petitioner, the candidate need not produce proof of eligibility by producing the mark-list or the list of subjects taken together with Science subjects at 10th standard (Secondary School Certificate Examination). The requirement can be 'substantially' complied with by demonstrating that both SSC and HSC examinations have been taken with the science subjects and in addition, in the 12th standard (but not in the 10th), that language course has been undergone by the candidate. Once that requirement is satisfied, namely, having studied a language course, particularly Arabic, it may be in the 10th standard or the 12th standard. That is sufficient for the eligibility requirement. In which year or standard or board exam it is done is, according to the petitioner, irrelevant, and the wording of the rule must be read down to allow for such 'substantial' compliance. According to the petitioner, the language requirement is not standard-specific. It is subject or language-specific and that subject or language must be taught and the student or candidate must take education as imparted in that language/subject and thereafter undergo the examination in that subject at the end of the academic year. The petitioner maintains that such a candidate is wholly eligible.

8. We are unable to agree with Ms.Musale appearing for the petitioner for more than one reason. The notification of the Central Council of Indian Medicine has been reproduced by us. That notification sets out the eligibility criteria. That eligibility criteria prescribed earlier in the year 1986 has now been substituted and to operate from the Academic Session 2019-2020. That is how the brochure is worded and is brought in tune with these regulations. The petitioner specifically undertook the NEET UG-2019 in the year 2019 and post this substitution having been brought into effect. Therefore, the substituted regulation will now apply and govern her admission. It is apparent from the same that the requirement is to undergo a study in that language. To be eligible she must have opted that language subject which is Urdu or Arabic or Persian in the 10th standard. Thus, the intermediate (10+2) or its equivalent examination with at least fifty per cent aggregate marks in the subjects of Physics, Chemistry and Biology and the candidate shall have passed 10th standard with Urdu or Arabic or Persian language as a subject, or cleared the test of Urdu of 10th standard is the requirement which has to be fulfilled by the candidate. She must have passed this examination with the minimum percentage in the science subjects. However, this candidate would also have to produce a proof of having cleared or passed the 10th standard examination with Urdu or Arabic or Persian language as subject or cleared the test of Urdu of 10th standard (wherever there is provision

to conduct of such test) in the entrance examination conducted by the University or Board or registered Society or Association authorized by the Government to conduct such examination. The eligibility criteria does not merely say that clearing examination in science subjects with minimum percentage would suffice. The requirement is also to clear or pass the 10th standard with Urdu or Arabic or Persian language as a subject, or clear the test of Urdu of 10th standard in the entrance examination conducted by the bodies referred to above.

9. Admittedly, the petitioner has no such proof. The petitioner has taken Arabic only in the 12th standard. That is the subject which she may or may have not opted while being admitted in the 12th standard and undergoing studies for the 12th standard course. This is not a case of a satisfaction of the requirement stipulated in the regulations although not opting for the language subject at the examination taken in the first instance or at the first stage, namely, 10th standard, but a requirement which says that it is only at the 10th standard that such a subject should have been cleared. It is not then open for a candidate to urge that she had not opted for such a subject in the 10th standard but in the 12th standard which is an examination of a higher grade.

10. We cannot rewrite the regulations framed by the academic bodies in our writ jurisdiction nor we do read into something which is not there. Equally we cannot read them down or dilute them. We cannot supply our justification for reading the regulation in the manner suggested by the petitioner when its language is plain, unambiguous and clear. The regulations are called "The Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations, 2016. Schedule III therein has been substituted. Now, the aim and object of Unani Education is to produce competent Unani graduates of profound scholarship having deep basis of Unani with modern scientific knowledge in accordance with Unani fundamentals with extensive practical training so as to become Unani Physician and Surgeon and research worker fully competent to serve in the medical and health services of the country. Therefore, to seek admission in the respective course of Bachelor of Unani Medicine i.e. for Admission to Kamile Tib O Jarahat Course, the candidate must have passed this examination. The reason for stipulating that the subject has to be cleared in the 10th standard or while passing the 10th standard examination in science subjects appears to be that such a subject may have been taken in prior years of study. It may be a subject studied at the primary or secondary level and which studies have continued up to the 10th standard. Thereafter the candidate goes into a different stream known as Junior College. Till, the SSC a candidate is part and parcel of the primary and secondary education. The tier is, standards 1 to 7 are now recognized as primary education and standards 7 to 10 are taken to be the secondary education, whereas, the studies thereafter are known as Higher Secondary Certificate studies or studies in Junior College. A candidate cannot say that I have studied the subjects of science in English language and have also taken Urdu or Arabic or Persian language as a subject in addition at 12th standard level. That candidate should have passed the 10th standard with Urdu

or Arabic or Persian language as a subject in the 10th standard examination. Doing so predicates several prior years of Urdu from at least the 7th Standard onwards and therefore increases proficiency and fluency in the language. At the SSC 10th Standard level, the petitioner took English as first language, Marathi as second language and Hindi as third language. Admittedly, she has not taken the study of Urdu, Arabic or Persian. There is no material before us to indicate that this subject was not available in the concerned educational institution.

11. We are thus of the opinion that the Minimum Standard of Education in Indian Medicine Amendment Regulations, by which Schedule III of the prior Regulations is substituted by prescribing the eligibility for admission, has not been satisfied nor the requirements stipulated therein are fulfilled by this candidate before us. The candidate was, therefore, rightly termed as ineligible. This is an academic decision and taken by experts in the field. Those who have prescribed this requirement are from the concerned field. The regulations are not under challenge. Its convenient interpretation by the candidate would not enable us to interfere with the impugned decision. So long as the regulations are consistent with the aim and object of the framers and as reproduced above, they are not in any manner vitiated by perversity or unreasonableness nor they are patently discriminatory or targeting certain students, then, we have no power to interfere therewith in our writ jurisdiction under Article 226 of the Constitution of India. Merely because another view of the same, according to the petitioner, is possible, we cannot interfere. So long as the interpretation of rules/regulations is palpably erroneous or illegal, we cannot interfere therewith. This is not a case of a person, who, placed in the same position, will not arrive at such an interpretation of the rules. It is a possible interpretation and so long as that is not perverse, we do not think that we should interfere therewith.

12. Being shown an ad interim order in another case will be of no assistance. That ad interim order contains no reasoning as to the background of why a 10th Standard language exam is mandated - precisely because it would require at least three to four years previous education in that subject and therefore heightened fluency and literacy in that language. It proceeds merely by saying that the 12th standard is a higher level than 10th standard. This may be true of the science subjects because they were also taken at the school level, i.e. SSC. But where the language is taken only at the HSC or 12th Standard level, the study is for, at best, two years and no more. The rule sets out the minimum standard, and the HSC Arabic exam at the 12th standard with fewer years of study does not meet this minimum standard and cannot be presumed, in our considered view, as being a higher level.

There is no material to show that the Arabic taught at the 12th standard level is higher than that at the 10th standard level. It would be exceedingly difficult to believe that someone who has not studied Arabic at all at the 10th standard and for several preceding years can jump to a much higher level in two years, or that we can presume any such thing. For all we know, the 12th standard first-timer

Arabic may be more basic. It would be different if the candidate studied Arabic at both levels and only then could it be said that a higher level had been attained. In any case, if it had been studied at both levels, the minimum standard would have been met and the question of eligibility would not even arise.

13. The writ petition is, therefore, dismissed with no order as to costs.