

(2009) 04 J&K CK 0045
In the Jammu And Kashmir High Court

Mohammad Obaid and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 10-04-2009

Acts Referred:

Indian Medical Council Act, 1956 — Section 13(4A)

Citation : AIR 2010 J&K 18 : (2009) 2 JKJ 463

Hon'ble Judges : H. Imtiyaz Hussain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H. Imtiyaz Hussain, J.—The petitioners after completing MBBS course have applied to the Medical Council of India for their registration.

Petitioner No. 1 has undergone the course in Chittagong Medical College Hospital, Chittagong; Bangladesh while as petitioner No. 2 has

undergone the course in Rangpur Medical College Hospital, Rangpur, Bangladesh. Council has not so far granted any registration to them. They

seek the following reliefs:

i) Issue writ, direction or order in the, nature of mandamus commanding the respondent No. 5 to accept the application form of the petitioners for

appearance in the Entrance test for admission to MD/MS/PG Diploma Course of their choice for which they are eligible as per advertisement

notice, without insisting for registration by the State Medical Council and petitioners be allowed to participate in the selection process for the said

course in all respects and their Consideration for selection be decided in accordance with rules governing the subject.

ii) Issue writ, direction or order in the nature prohibition restraining the

respondents from denying the petitioners to participate in the selection process for MD/MS/PG Diploma Course in any Government College/Institute in the State on the ground of their failure to obtain the registration with the State Medical Council.

2. Respondents have not filed their objections. Heard.

3. Relevant provisions of the Indian Medical Council Act, 1956 cited by the Mr. Jan, learned Counsel for the petitioners are as under:

2(e) ""Medical institution"" means any institution within or without India, which grants degrees, diplomas or licences in medicine;

2(h) ""recognised medical qualification"" means any of the medical qualifications included in the Schedules:

Section 11 : Recognition of medical qualifications granted by Universities or medical institutions in India.- (1) The/medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act.

Section 12 : Recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity- (1) The medical qualifications granted by medical institutions outside India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Act.

Section 13 : Recognition of medical qualifications granted by certain, medical institutions whose qualifications are not included in the First or Second Schedule.- (1) The medical qualification granted by medical institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act....

4. Mr. Jan would submit that since the institutions from where the petitioners have done MBBS are included in the Second Schedule to the Act, u/s 12 of the Act, the' medical qualifications, granted by these Institutions are recognised medical qualifications as such the Council should register the petitioners under the provisions of the Act.

5. Mr. A. M. Magray AAG, appearing for respondents Nos. 3 and 4 submits that in terms of Section 13 (4A) of the Act a candidate who obtains

medical qualification granted by any medical institution in any country outside India recognised for enrolment as medical practitioner in that country

cannot be enrolled by State Medical Council unless he qualifies the screening test in India prescribed for such purpose. Since the petitioners have

not so far qualified the screening test, they are not, according to the learned Counsel entitled to enrolment.

6. Mr. Jehangir appearing for the respondent No. 5 states that under the directions of the Court dated 6-2-2009 the petitioners were permitted to

sit in the entrance test of MD/M.S./PG but as the result is now ready the respondents seek directions whether the petitioners can be considered for

admission without having cleared the screening test.

7. Mr. Mushtaq appearing for respondent Medical Council of India has referred to the various provisions of the Act particularly the provisions

cited above and submits that qualifying the screening test as laid down in Section 13 (4A) is a pre-requisite for enrolment with the Medical Council

of India for a candidate who has done his MBBS from outside the country.

8. Mr. Jan has vehemently opposed the contentions that any screening test is required for a candidate who has done MBBS from the Medical

Institution contained in Schedule II. He contends that the Act has divided the medical institutions into three categories i.e. i) Institutions in India 2)

Institutions contained in Second Schedule of the Act and 3) Institutions contained in third Schedule of the Act.

9. Requirement for qualifying a screening test is only for the candidates who have undergone the course from the Institutions falling in the third

category. This according to the learned Counsel is for the reason that the provision for screening test is contained in Sub-section 4A which was

inserted vide amendment to Section 13. Mr. Jan has in this behalf referred to the head note to Section 13 which reads as under:

Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule.

Mr. Jan has relied on Medical Council of India and another Vs. State of Rajasthan and another, : State of Andhra Pradesh and Others Vs.

Goverdhanlal Pitti, in support of the pleas raised by him.

10. On consideration of the matter I find no merit in the submissions of Mr. Jan. I could not find any ground for the admission of this petition.

Sub-section 4A to Section 13 reads as under:

(4A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised

for enrolment as medical practitioner in that country after such date as may be specified by the Central Government under Sub-section (3), shall

not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his name entered in the Indian Medical

Register unless he qualifies the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies

the said screening test shall be deemed to be the recognised medical qualification for the purposes of this Act for that person.

11,. On a plain reading of the Sub-section 4A it is evident that where a person has obtained medical qualification granted by any medical institution

in any country outside India he shall not be entitled to be enrolled on any Medical Register maintained by a Slate Medical Council unless he

qualifies the screening test in India prescribed for such purpose. Placing Sub-section 4A in Section 13 would not mean that the requirement of

qualifying the screening test applies only to the medical institutions which are not included in the First or Second Schedule. The requirement will

equally apply in case of a person who has qualified from medical institution outside India which is included even in the second schedule. The sub-

section in unequivocal terms states that a screening test is required where a person has obtained medical qualification from Institute outside India.

The wording of the sub-section is so clear and unambiguous that there is no need to go to the head note of the section to know the intention of the

legislature.

12. It is settled rule of interpretation of statute that if the language of a section is clear, headings are not to be taken into consideration. The heading

of a section cannot control the clear language of the section. The heading cannot be referred to for the purpose of construing the provision when

the words used in the provision are clear and unambiguous, nor can they be used for cutting down the plain meaning of words in the provision.

13. Petition is dismissed.